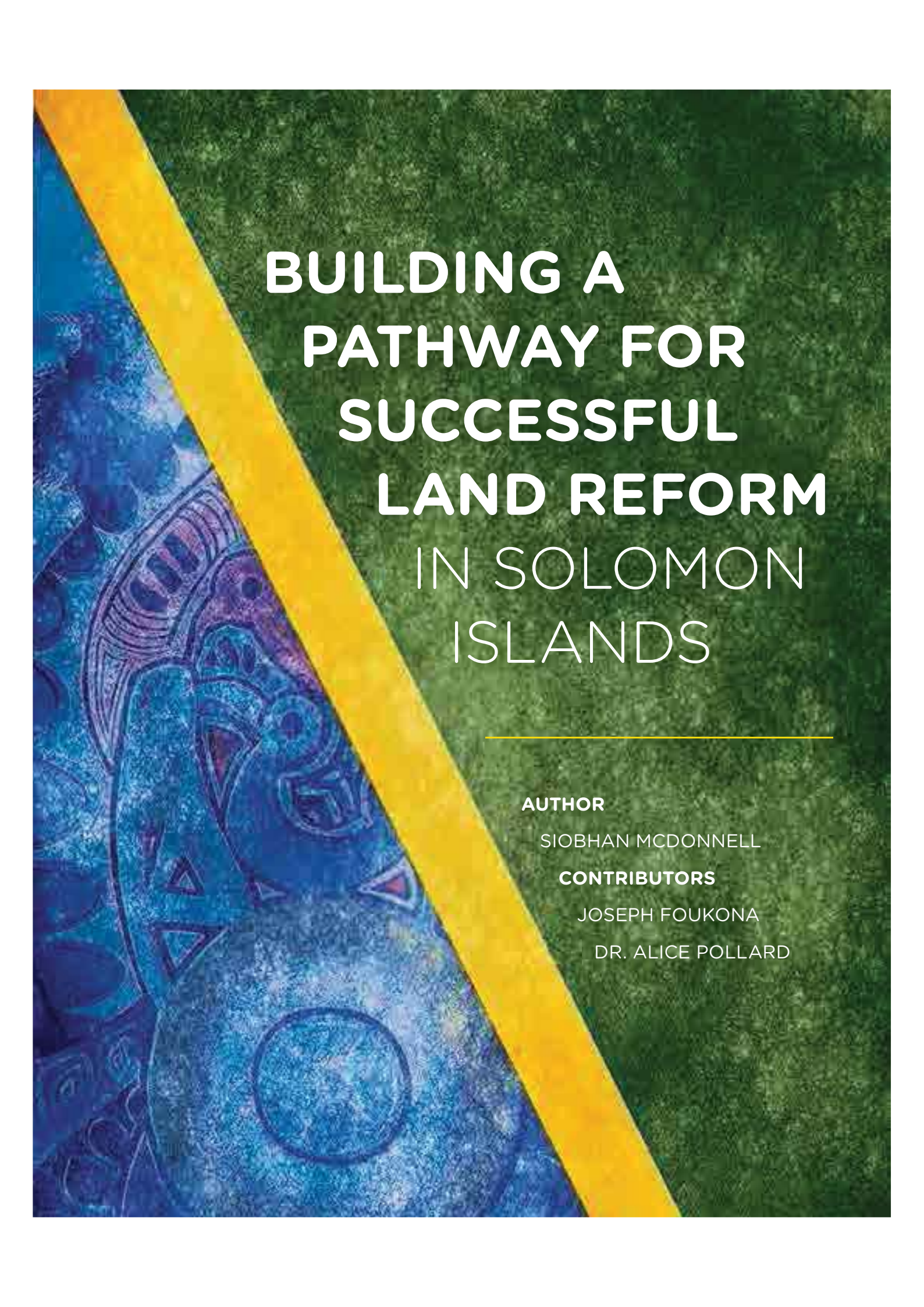




BUILDING A PATHWAY FOR SUCCESSFUL LAND REFORM IN SOLOMON ISLANDS

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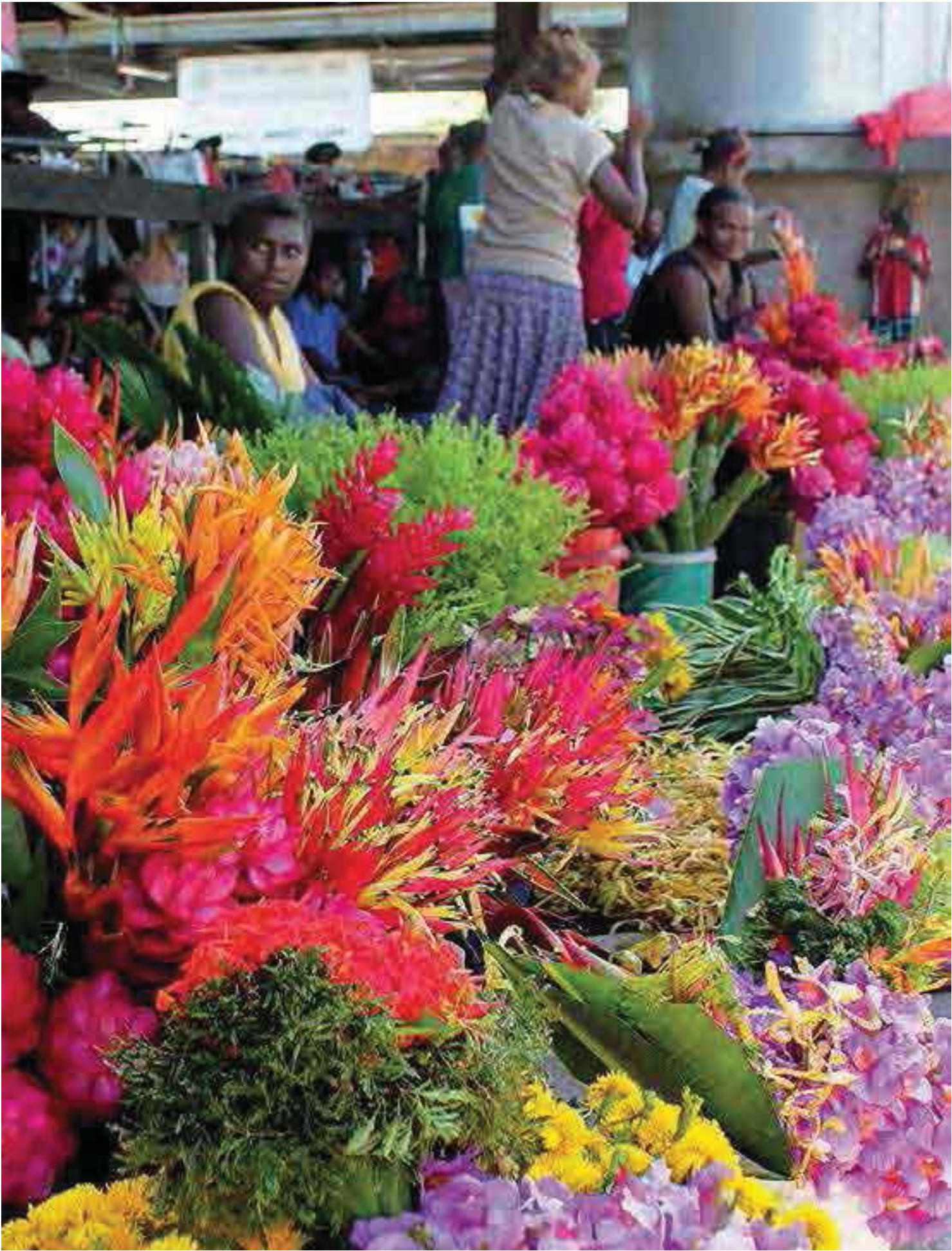
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MAP

SOLOMON ISLANDS



FOREWORD





As a Solomon Islander I developed an interest in examining land reform in Solomon Islands because I had noticed that this topic had been on the government's development policy agenda for many decades. When policy makers and other stakeholders discuss land reform often what they envisage is a process of simply amending existing or introducing new land laws. They continue to refer to law as an unproblematic framework for 'unlocking' or 'opening up' land for development. This way of thinking continues to shape Solomon Islands development policy rhetoric at the national and provincial level.

But what exactly are we trying to 'unlock' or 'open up' in terms of land reform? Customary land in Solomon Islands is already working as it always has. Many current economic activities such as logging, copra, cocoa and other agricultural crops are happening on customary land. This means the bulk of our national economic gross domestic product (GDP) comes from customary land, so I don't think customary land needs opening up. What is more important when we discuss land reform is making sure that all landowners receive equitable returns from development on their land.

The political economy of Solomon Islands is dominated by logging, and now by the gradual shift to mineral extraction. Landowners have high rental expectations from these sectors. However, the history of logging, mining and land dealings shows how corruption and conflict of interest have contributed to the increase in land contestations in recent years. Middlemen involved in brokering these economic activities as 'trustees', 'logging licensees', 'land consultants' or government agents lack capacity and some of them act dishonestly when representing different landowner interests. Often when landowner groups are not happy, they dispute these deals or refuse consent for development activity on their land. Government agencies have too often played a role in promoting investor interests rather than looking after landowners.

The experience of legal processes for land acquisition, logging licensing, natural resource extraction agreements, land dealings either on customary or state land in urban areas shows that the current trustee model, embedded in these legal processes, can easily be manipulated by mainly powerful male actors. These experiences point to the need to review legal processes and engage in land reform that is based on the needs of landowners and investors. This should be led by the Solomon Islands government, pulling together talented Solomon Islanders to drive land reform. In my mind, such an approach would help to create not only a space for developing 'thought leadership' but also inter-generation capacity building of Solomon Islanders to better manage and deal with land issues.

This Report highlights the need for a step by step development process for land reform efforts. Based on land reform experience in other Melanesian countries, it shows that a successful land reform process requires clear policy direction. The amending or writing of new land laws should be the final step of this land reform process, rather than the beginning. This report is a useful discussion document that we can draw on as we constructively engage in dialogue to create our own unique pathway for a successful land reform in Solomon Islands.

**Tagio Tumas,
Joseph D. Foukona**



EXECUTIVE SUMMARY

A PATHWAY FOR SUCCESSFUL LAND REFORM

We all know that land reform is a challenging process. It is challenging because land is a major source of conflict. It is challenging because most Solomon Islanders still depend on subsistence farming for survival. It is challenging because the political economy of land, forestry and mining make creating a pathway for successful land reform difficult for leaders.

The good news is that building a pathway for land reform is possible.

› **Experience from the Melanesian region shows that successful land reform is possible.**

This paper describes possible steps Solomon Islands could consider in developing a successful approach to land reform. It shows that it is possible to walk the pathway to achieve successful land reform.

There are three reasons why land reform should be an urgent priority in Solomon Islands:

- 1** Land reform has the potential to create huge benefits in terms of fairer and more sustainable development.
- 2** Land tensions are a significant and ongoing issue that must be addressed.
- 3** The current legal system is not working. Land disputes are not being resolved in a timely fashion and there is an immense backlog of existing land cases.

Importantly, the Solomon Islands government has identified land reform as a priority issue. They have committed to building a pathway for land reform.

It's useful to consider the experience of land reform in other Melanesian countries. Melanesian pathways to land reform show how different countries have approached identifying landowners and managing land disputes. By learning

from the experiences of Vanuatu, Fiji and Papua New Guinea, the Solomon Islands government can begin to design its own, unique pathway for land reform.

Building a pathway for land reform requires a visionary approach. It involves looking over the horizon to other countries, and taking a longer-term view of how customary land can be used to benefit the next generation. It requires carefully thinking about where the path will start and what development outcomes it will lead to. It requires a holistic approach that links policy directions around development projects, forestry and mining with a plan for how to identify custom landowners and manage land disputes. It is about finding a pathway that balances the needs of landowners with the needs of business.

The government must develop a clear policy vision for land reform, which means considering:

- **What development is needed and how applications for development will be managed.**
- **How custom landowners will be identified.**
- **How land disputes will be resolved.**
- **How negotiations with custom landowner groups will be conducted.**
- **How any new legal arrangements can ensure the free, prior, informed consent of custom owner groups to development.**
- **What kinds of land tenure arrangements are needed to secure development.**
- **How custom landowners can access long-term benefits from development.**

The government must lead the way, but it must also listen to the community. Large-scale land reform can only be led by government. Successful land reform will require champions for land reform within government and from civil society.

Successful government-led land reform requires a long-term approach, which builds a broad-based consensus around reform directions. This consensus can be built through genuine consultation involving meaningful dialogue around clear land reform goals. The government must genuinely listen to what people across the islands want in terms of land reform. Informed by this process the government will then have a mandate to act. Regional experience suggests that there are ten steps to successful land reform.

Ten steps on the pathway for land reform

- 1 Genuine, broad-based consultation across the nation on the directions for land reform.**
- 2 Public debate of key land issues. This could include holding national consultations that lead to a National Land Summit.**
- 3 A clear policy vision from government setting out a holistic approach to how customary land can be developed.**
- 4 Development of models for identifying custom landowners and for resolving land disputes.**
- 5 Genuine broad-based consultation on new models for identifying custom landowners or resolving land disputes. This could also include piloting new models to determine what does and does not work.**
- 6 New legal arrangements for land dealings debated and consulted on, before being finalised in legislation.**
- 7 Support for the land ministry, and funds for implementing the new legal arrangements.**
- 8 The new legal arrangements need to be passed by parliament.**
- 9 Piloting of the new legal arrangements on customary land. These pilots should be monitored and evaluated.**
- 10 Further amendments to the new legal arrangements based on the reviews of the pilots. (Repeat steps 9 and 10 as many times as needed.)**

Land reform really means the holistic process of consultation, dialogue and policy formation that results in new legislation around land dealings. Just writing new land legislation will not, by itself, create successful land reform. Significant consultation must be completed before amending existing legislation or drafting any new legislation.

- › **Legislation to change legal arrangements over land should be the final step in a good land reform process.**

Any changes to land legislation must reflect the cultural diversity of Solomon Islands. Just as land holding arrangements in Solomon Islands differ from elsewhere in the region, Solomon Islands will need its own unique land laws to meet the needs of the diverse cultural groups who live across the archipelago. Legislation can be drafted to allow for a diversity of local arrangements across the islands.



Land reform pathways do not end with the passing of new legislation. New land legislation can fail during implementation. New processes for land dealings and dispute management need to be piloted and reviewed. Ultimately the government must find the funds to implement new land reform arrangements. Land administration agencies at the provincial and national level must understand the new arrangements and any new roles that they may have.

› **Land reform is challenging but it can reap enormous benefits.**

Successful land reform can deliver fairer, more sustainable development outcomes. Successful land reform can result in better sharing of the benefits of development amongst the custom landowner groups and better management of land disputes. Successful land reform can reduce land disputes as a source of conflict.

This paper is designed to support Solomon Islands build its own pathway for land reform by learning from the regional experience. Based on regional experience it describes some key steps in the pathway for successful land reform.

The pathway to land reform must be built by government walking alongside landowners and businesses.

Successful land reform in Solomon Islands is possible.

Step-by-step it can be done.

What does customary land reform mean?

“ The beauty of customary land is that it keeps everyone together, it allows their survival. When you start talking about land alienation—you own the title, or the subdivision, you will start having land disputes. Customary land is the reason we survive, if we start to subdivide Malaita or Guadalcanal, people will not survive because there will be no land for them to make gardens, people will be on the street. Customary land means you don’t need money, you can always go home, you always have a place to go to live.”

— WAETA BEN, FORMER MINISTER OF LANDS, HOUSING AND SURVEY

Overwhelmingly, people in Solomon Islands are subsistence farmers. They live, garden and build houses on customary land. Most land in Solomon Islands (around 87 per cent) is customary land.

Like weaving a mat, customary land rights form a complex overlapping set of access and use rights over an area of land. In Solomon Islands, customary rights over land are generally rights held by a group of people as tribes, clans or families, whereas use rights can be allocated to individuals. Customary tenure arrangements are fluid and flexible and are highly negotiable. Overlapping sets of customary tenure rights can lead to disputes.

Customary land rights are allocated through kinship structures, marriage arrangements, adoption and customary payments. Customary land rights systems differ depending on where you are in Solomon Islands. Systems of customary land rights that follow the mother’s line (termed matrilineal systems) can be found in Guadalcanal, Makira, Isabel and Central provinces. In Malaita as well as most of western Solomon Islands, land claims usually follow the father’s line (termed patrilineal systems). In other parts of Solomon Islands, land claims can follow either the father or mother’s line (termed ambilineal systems).

Land reform means making changes to the existing policies and legal arrangements over land tenure, land administration and land dispute settlement processes. However, building a pathway to land reform is much more than just making new law. It is a process of considering whether the current land laws are working well, or if they need changes. Land reform means looking carefully at the laws related to customary, state or alienated land and seeing if these can be improved.

So, what do you think? Are the current legal arrangements over customary land working well? Is it easy to do development projects on customary land? Is it easy to identify all the members of the customary landowning group? Does everyone in the customary landowning group benefit from development on customary land? What do you think should be changed?



PART ONE

STEPS IN BUILDING A LAND REFORM PATHWAY

“ Land has been a major government policy area that needs to be addressed. I consider customary land as one of the pivotal policy areas. Every form of development in Solomon Islands depends on land, so land is very important. In fact, land is a root cause of our ethnic conflict in our recent past. That is why I consider that land should be a major priority in government planning. It is very important that land is made secure and available for as many people as possible.”

— FORMER PRIME MINISTER, DANNY PHILLIPS

Why undertake land reform?

There are three reasons why building a land reform pathway should be an urgent priority in Solomon Islands:

- 1** Land reform has the potential to create huge benefits in terms of fairer and more sustainable development.
- 2** Land tensions are a significant and ongoing issue that must be addressed.
- 3** The current legal system is not working. Land disputes are not being resolved in a timely fashion and there is an immense backlog of existing land cases.

In Chapter One, we will look at land reform as a pathway to more sustainable development. In Chapter Two, we will begin to look at the steps that can be taken in building a pathway for land reform in Solomon Islands.

“ If we are to grow the Solomon Islands economy, we need to fully realise the potential of customary land. Our rural economy can contribute to our country, but only if we can find a practical approach to customary land. At the moment, there are enormous costs — to the country, to taxpayers, to the community, from managing all the land disputes. The state doesn't have the resources and time for everyone to contest every aspect of a customary land arrangement.

We need to find common ground to reconcile that practice over there and this practice over here. Investors don't expect different standards, otherwise they will say my risk is too high. Our common goal must be to make an investment profitable, to contribute to the local economy and the country's economy.”

— FORMER PRIME MINISTER, GORDON DARCY LILO

“ The perennial obstacle to any government's successful development efforts is our land tenure system. Approximately eighty-eight per cent of the nation's land is tribally owned and is thus in the hands of our customary land tenure system. To mobilise such lands for development is expensive, debilitating, and time-consuming. This is because all the members of the tribe that lays claim to a tract of land must agree to ensure uninterrupted development. Otherwise, progress is hindered or completely disrupted by continuing land disputes.”

— FORMER PRIME MINISTER, SIR PETER KENILOREA



1 LAND REFORM AS A PATHWAY TO FAIRER AND MORE SUSTAINABLE DEVELOPMENT

Land reform can produce fairer and more sustainable development. Good land reform will encourage investment and place a country on a more sustainable development pathway.

Businesses need secure land tenure arrangements to operate and good land reform can provide this. Secure land tenure arrangements by themselves will not create successful businesses. In the past, the Solomon Islands government has provided long-term perpetual estates or fixed term estates to businesses, and the businesses have failed. This is because successful economic development on customary land needs more than secure land tenure; it also needs local landowner and community support or an effective 'social licence' to operate.

- › **Building an effective social licence means having the consent and agreement of the broad customary landowner group before a development takes place.**

Effective land reform can provide secure tenure for business and appropriate recognition of custom landowners' rights so that the development generates meaningful, long-term benefits. Government can lead land reform processes that build trust; communities can then be confident development will produce economic opportunities and provide long-term benefits to land owning groups.

- › **Successful land reform delivers long-term benefits for business, custom landowners and government. Business wins a secure commercial operating environment; the community and landowners win employment opportunities and income; and government wins a more secure revenue base.**

The second reason for pursuing land reform is that land-related tensions are significant and ongoing in Solomon Islands. Some issues date back to the Tensions. Other, newer issues have been caused by disputes over who benefits from development, whether logging, mining, or other initiatives. There are significant risks if these tensions are not addressed.

“ The conflict made land a national issue. We raised land reform again and again as part of the peace process. These promises have all been broken. The Commission of Inquiry into land dealings on Guadalcanal met for several months and there was no report. We are still waiting for a report. Nothing is resolved. The government wants to expand the boundary of Honiara onto customary land. There are still too many squatter settlements. We won't accept this. Guale people will not accept it. The government must address land issues.”

— GUADALCANAL PROVINCE MINISTER OF LANDS, HON. JOHN NANO

“ Before land was an asset to the tribe. Everyone knew the boundaries and who belongs to the land. Now we don't know any more. Now we want to dispute. Kastom tells us land belongs to this group here but the law allows us to dispute. Now the laws are causing the disputes— land, logging and mine laws are causing disputes. And usually everyone who is disputed is related to each other. If you dispute each other you are tearing the links, and whoever wins the other group will still have grievances. This is happening too much, and this is what is causing all the problems.”

— RINALDO TALO, PRESIDENT OF LOCAL COURT, MALAITA

“ Land to most societies in Solomon Islands is like a mother. People feed from the land and people depend on the land for their livelihoods. There is a very close link between the daily existence of people and their land. Where I'm from, people have been very conservative about land. Traditionally, they didn't want foreigners to come in and take their land. Land was where their inheritance was, and they didn't want to open it up to others. But these days there are new considerations. People want development to grow the economy, and to enjoy the better government services that are possible with economic growth. A better education system for children, and better health services for everyone. People have had a change of mind. They now want development to achieve the standard of living we all expect today.

But because of the law, the current Land and Titles Act, people are very frightened. People have changed their minds about development, but they don't want to lose their title over their customary land. They don't want to give away perpetual title to the land, so future generations miss out. That's one of the shortcomings of the Land and Titles Act, that people worry about the government trying to take their land away.”

— MINISTER FOR LANDS, HOUSING AND SURVEY HON. ANDREW MANEPORA'A



The third reason for pursuing land reform is that the current legal arrangements are not working. Courts are clogged with land disputes. There is now an immense backlog in land cases that will take decades to resolve. Land disputes must be resolved quickly by institutions that are recognised as legitimate, so that they do not further exacerbate tensions. Current legal arrangements seem to cause conflict, rather than create processes that help streamline the resolution of land disputes.

- › **Current legislation around land consists of the outdated Land and Titles Act and the rarely used and largely non-operational Customary Land Recording Act.**

As well as specific land laws there are also legislative arrangements for forestry and mining developments. These laws contain many inconsistencies. They also show that historically, there has been a piecemeal approach to land reform that addressed a particular issue in a particular sector. Often different agencies have taken on the responsibility for legislation to deal with a particular issue — for example, land recording — without considering the implications for existing legislation, and across other sectors.

Land and Titles Act

PURPOSE	Details the major categories of property rights and land tenure arrangements in Solomon Islands. Includes the following provisions around customary land: 1 The manner of holding, occupying, using, transacting, enjoying and disposing of customary land shall be in accordance with current customary usage (s 239(1)) (s 240). 2 Can only be alienated by a Solomon Islander (s 241(1)). 3 The only way to transfer an interest in customary land is to alienate it through sale or lease to the Commissioner of Lands so that it is registered as a perpetual estate (s 60). In creating a perpetual estate the Act states that all existing village residential areas, burial grounds or sacred places, village nut or fruit groves, waterholes and other special purpose areas must be exempted (s 46). Under the Act, Perpetual Estates are held by up to five 'duly appointed representatives' listed as trustees in the land title (s 46).
STATUS AND MAJOR ISSUES	Enacted and operational but has numerous problems. The Act provides wide pseudo-judicial powers to Acquisition Officers to hold hearings and determine landownership (s 61–65). Acquisition officers can potentially abuse these powers in favour of one party over another. Almost all determinations are appealed (s 66) thereby clogging the court system. Registration of interests in land to trustees creates major problems in terms of the distribution of benefits to the broader landowning group.

Customary Land Recording Act

PURPOSE	Arrangements for recording customary interests in land.
STATUS AND MAJOR ISSUES	Enacted but non-operational. One trial conducted at Alutua Basin. No clear link between the processes in the Land and Titles Act and the recording process in this Act.

Tribal Lands Dispute Resolution Act

PURPOSE	Proposes a new land tribunal model to resolve customary land disputes.
STATUS AND MAJOR ISSUES	Proposed Act based largely on a repealed Vanuatu Customary Land Tribunal Act which had several problems with it. Solomon Islands could consider the problems identified in the three separate reviews of the Vanuatu Act.



- › **Current land legislation does not outline a transparent development process for businesses. Nor does it clearly identify how landowner groups can generate long-term benefits from customary land.**

Current development consent processes and processes for negotiation with customary groups are easily open to manipulation by powerful male leaders, middlemen, government officials and investors.

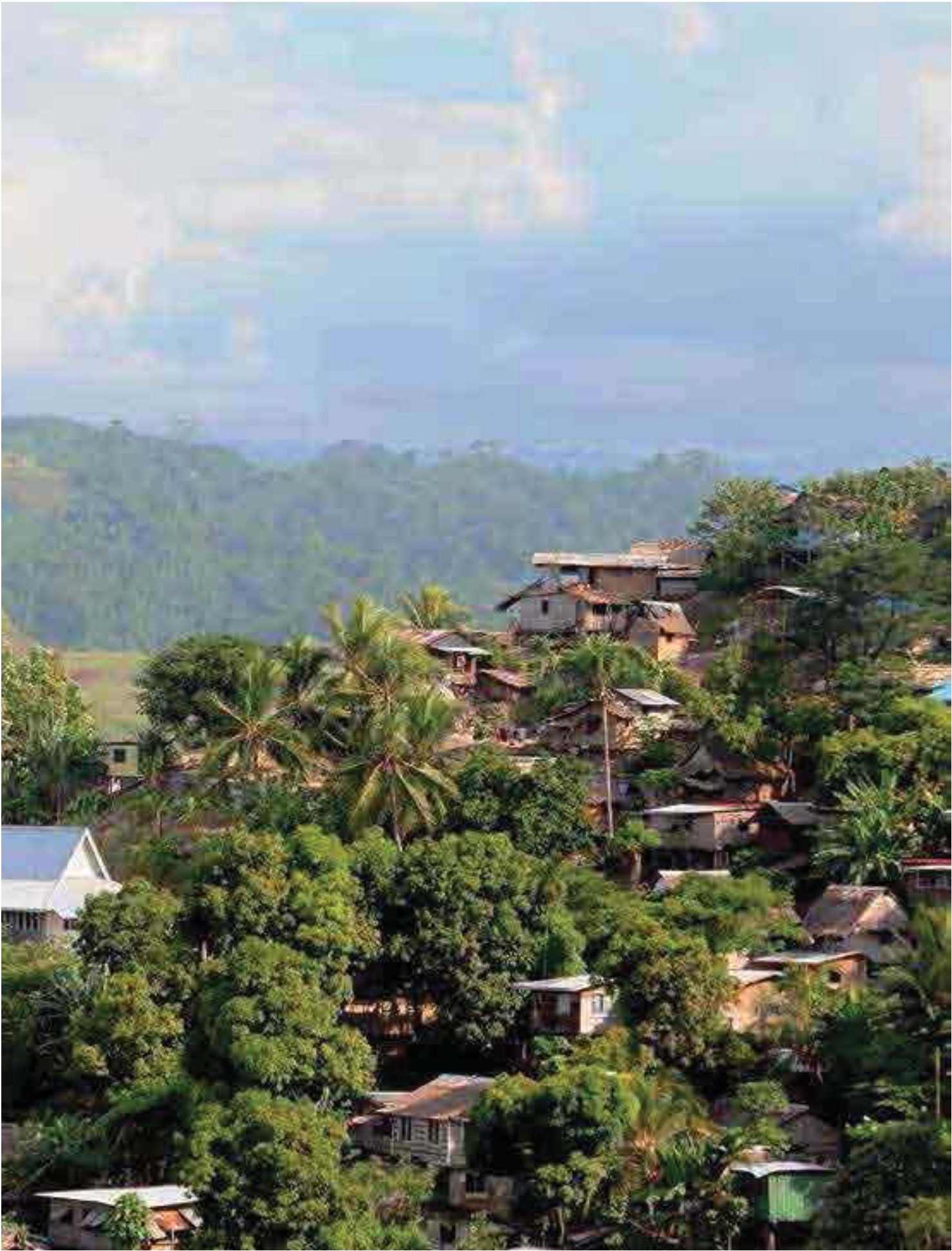
“ In my time as a Justice I have seen too many agreements that are complete rubbish — timber agreements, logging agreements, lease agreements. These agreements all demonstrate the manipulation of landowners by investors. That is what has been happening in our country.”

— HIGH COURT JUDGE REX FOUKONA

Major problems exist with the current processes for the registration of customary land used in Solomon Islands. Under the current land registration processes, property rights are allocated to a maximum of five trustees — almost always men — who often do not share the benefits from development projects with the wider landowning group. The failure to equitably distribute benefits from development remains a major source of conflict. Young people in particular are concerned that powerful men are taking the overwhelming share of benefits from development on customary land.

These three reasons point to the fact that something needs to shift in the current legal arrangements over land.

- › **Land reform is urgently needed.**



2 BUILDING A PATHWAY FOR LAND REFORM

So how does Solomon Islands begin to build a pathway for land reform? Regional experiences of land reform can provide guidance for Solomon Islands in building its own pathway for land reform. By learning from the region, the government can build its own policy vision for land reform in Solomon Islands.

Building a pathway to land reform begins with understanding what the problems are. We may think we know this already, but we need to make sure our assumptions are correct. To do this, we need evidence. The best way for the government to collect the evidence is to engage in provincial and national consultations on land issues. So the first step in any land reform pathway is broad-based consultation.

Genuine consultation means more than awareness raising. It means sitting down with groups of people: leaders, men, women and young people across the islands and listening to what they say.

We know that Solomon Islands is extremely culturally diverse so we need to make sure we capture people's perspectives across the archipelago. We need to find out what land issues people face. Do they want development on their land, and if so, what kind of development? We need to find out if land disputes are being resolved effectively, and how? We need to ask people who they would like to resolve land disputes in their area. Do they have a functional established House of Chiefs? Does the House of Chiefs work well at resolving disputes and, if not, why? How does development happen on their land? We need to find out if all people benefit equally from development on their land, and if not, why not?

Every Solomon Islander can answer these questions for their own land, but we need to find the answers to these questions across the country.

Lessons from the region suggest that land reforms developed without broad-based support can lead to tensions, riots and even deaths. Consultations will help to build public support around the right directions for change, and trust in the overall process. Consultations around the directions for land reform can help to reduce any potential conflict.

› **So the first step on the land reform pathway is to develop a strategy for effective consultation.**

This is not just listening to what people say, it is also about carefully documenting what is said and making these views publicly available for debate across the country. It is about reporting back to politicians and other leaders who will then have a mandate to change land laws.

Apart from the consultations, the government needs to communicate a clear policy vision for how it plans to address the key issues of concern around land dealings in Solomon Islands. And the government must be able to address all the steps needed for development to take place on customary land.

The government will therefore need to develop clear models for how to identify custom landowners and how to resolve land disputes. Learning from regional land reform experiences will help to identify which models have worked in other jurisdictions (see Part Two of this paper).

A clear policy vision for land reform

The government must develop a clear policy vision for land reform, which means considering:

- 1 What development is needed and how applications for development will be managed.**
- 2 How custom landowners will be identified.**
- 3 How land disputes will be resolved.**
- 4 How negotiations with custom landowner groups will be conducted.**
- 5 How any new legal arrangements can ensure the free, prior, informed consent of custom owner groups to development.**
- 6 What kinds of land tenure arrangements are needed to secure development.**
- 7 How custom landowners can access long-term benefits from development.**

In developing a clear policy vision for land reform, the government must be prepared to rethink assumptions about how development takes place on customary land. A holistic land reform process means that long established legal and administrative practices can be reconsidered. For example, is it necessary for the government to acquire customary land and then lease it for development? Could a better model be a simple lease arrangement between custom landowners and developers under a leasing process that is regulated by government? This model exists in other Melanesian jurisdictions and it may be something that the government wishes to consider.

Custom landowners and business need to be clear about how to develop customary land.

› **The government must find a middle pathway that balances the needs of custom landowners with those of business.**

“What people want, and what they see happening around the region, is that it’s possible to lease out their land. This makes people feel more secure. They enjoy the benefits of development, but the title for the land stays with them. That’s the attitude now of people in my area: we can undertake any reform, but the title to the land must remain with us. So it’s important to bear this in mind as we’re heading forward with land reform. It links back to how land is so important to people, and so essential to their livelihoods. The only hope for the future is to find a system where people can allow development but still feel comfortable in their daily existence with their connection to the land.”

— MINISTER FOR LANDS, HOUSING AND SURVEY HON. ANDREW MANEPORA’A

Successful land reform means creating a pathway for development that results in an agreed social licence between landowners, government and business. Evidence has shown that in the absence of long-term support of landowner groups, developments in Solomon Islands regularly fail. New innovative approaches to agricultural production and hydro-power projects may provide positive directions worthy of further consideration.

› **Building successful businesses in Solomon Islands means establishing a social licence to operate.**

A social licence to operate is something that exists outside of formal agreements or lease instrumentality. It is the local credibility and acceptance of the business and their project, and it can change over time. Having a social licence to operate means having the ongoing acceptance of the landowner group and other affected groups. One way of ensuring that a social licence exists between business and landowners is by ensuring the free, prior and informed consent of landowners to developments on their land. Increasingly large-scale financial donors such as the World Bank, Asian Development Bank and the International Monetary Fund are requiring that free, prior and informed consent guidelines are met for any development project.

Free, prior and informed consent by landowner groups to a development on customary land means:

- the absence of coercion, intimidation or manipulation (**Free**);
- early consent with adequate time for local decision-making processes (**Prior**);
- access to sufficient, appropriate information for a considered choice in the following areas: the nature of the activity — its size, pace, reversibility, scope, rationale, duration, location — and its likely impacts (**Informed**); and
- the right to consent, or to withhold consent.¹

In Solomon Islands land issues intersect with forestry, mining and agriculture. Developing a holistic approach to land reform means making sure there is consistency across laws in inter-related sectors. This will involve coordination across various government agencies, perhaps through a high-level technical working group. Ultimately the government's policy vision for land reform will need to state how the new legal arrangements for land dealings flow into logging, mining and agriculture arrangements.

Once the government's policy vision for land reform is finalised, regional experience suggests that further consultation will be needed. These consultations are about truth testing the models for identifying landowners and resolving land disputes in various locations. This involves asking people if they think the new models will work where they live, and if not, why not. This is a process of active learning, considering what is said in consultations and revising the models. It should also involve constructive public discussion and debate.

The government may also wish to pilot the models in targeted locations as a means of gathering evidence around the best directions for land reform. Once there is agreement on the models and policy vision the new legal arrangements can be finalised. Broad-based consultation can also be useful in ensuring bipartisan support for land reform.

› **New land laws will need to be unique to Solomon Islands.**

Just as *kastom* looks different in Solomon Islands compared to other parts of the region, land holding arrangements also look different. Solomon Islands has a unique colonial legacy that informs its land arrangements in particular ways. The political

¹ Adapted from the United Nations Permanent Forum on Indigenous Peoples, 2010 Free, Prior and Informed Consent guidelines.

economy of land in Solomon Islands intersects with forestry, mining and agriculture in ways that differ from other countries in the region. So while Solomon Islands can learn from the region, its pathway to land reform will need to be its own. And any new laws that are drafted will need to be written specifically for Solomon Islands, not simply borrowed from other jurisdictions as has occurred in the past.

A holistic approach to land reform means consistency in the new legal arrangements across all laws. It means tightening up existing loopholes caused by overlapping legal arrangements on the allocation of land and other property rights, such as logging rights. This tightening of legal arrangements will ensure that a single, clear development process can be identified by business and landowners.

Ten steps on the pathway for land reform

- 1 Genuine, broad-based consultation across the nation on the directions for land reform.**
- 2 Public debate of key land issues. This could include holding national consultations that lead to a National Land Summit.**
- 3 A clear policy vision from government setting out a holistic approach to how customary land can be developed.**
- 4 Development of models for identifying custom landowners and for resolving land disputes.**
- 5 Genuine broad-based consultation on new models for identifying custom landowners or resolving land disputes. This could also include piloting new models to determine what does and does not work.**
- 6 New legal arrangements for land dealings debated and consulted on, before being finalised in legislation.**
- 7 Support for the land ministry, and funds for implementing the new legal arrangements.**
- 8 The new legal arrangements need to be passed by parliament.**
- 9 Piloting of the new legal arrangements on customary land. These pilots should be monitored and evaluated.**
- 10 Further amendments to the new legal arrangements based on the reviews of the pilots. (Repeat steps 9 and 10 as many times as needed.)**



PART TWO

LESSONS FROM MELANESIA

Learning from the region

Melanesia offers a wide variety of approaches to customary land management and land reform. By focusing on the land reform experiences of Vanuatu, Papua New Guinea and Fiji we can consider:

- What lessons can the regional experience of land reform teach policy makers in Solomon Islands?
- What pathways have other Melanesian countries built for land reform?
- Have these pathways worked well?
- Where have land reform processes failed?

Learning from the regional experience of land reform, Solomon Islands can begin to build its own, unique pathway for land reform (explored in Part Three of this Paper).



3 VANUATU'S PATHWAY FOR LAND REFORM



- › **The catalyst for land reform in Vanuatu was a land rush beginning in 2000, which saw a dramatic increase in the leasing of customary land, mainly for real estate and tourism development.**

In 2010 just under 10 per cent of all customary land was leased. Customary land was often leased without the consent of the custom landowner groups. Successive Ministers of Land signed off on almost half of all leases over customary land without any consultation with custom landowners. In the other half of leases, a male leader, usually a chief or a small number of powerful men, leased customary land without the knowledge or consent of the broader group of landowners.

At the same time that customary land was being leased at an unprecedented rate, the courts became clogged with land disputes. In 1999, the Chief Justice declared that state courts would no longer accept any new land cases, due to the immense existing backlog in land-related cases. In 2001, this led to the introduction of the *Customary Land Tribunal Act*, which transferred the jurisdiction of land matters from Island Courts to Land Tribunals. The land tribunal process remained controversial with multiple avenues for review, and most matters were still being appealed through the court system. This meant that even with land tribunals, many land disputes remained unresolved. The legal arrangements over land disputes needed to change.

Champions for land reform

Building successful land reform requires land reform champions who can drive change. Political champions can provide leadership of the land reform process within government. Civil society champions can build coalitions of support for land reform. Sometimes key government representatives have vested interests in maintaining current legal arrangements. It's therefore important to have a broad public process that involves key actors beyond the state, such as civil society actors. Successful land reform efforts often rely on broad-based public momentum.

Public concern over the leasing of customary land in Vanuatu provided the momentum for a broad-based public movement for land reform. The Vanuatu Cultural Centre, the Malvatumauri (Council of Chiefs) and the Vanuatu Association of Non-Government Organisations began to push for a political response to slow the leasing of customary land. In 2006, consultations were run in all the provinces around the changes people wanted to land laws. The provincial consultation teams consisted of representatives from the Vanuatu Cultural Centre, Malvatumauri and three officers from the Department of Lands. Resolutions from each of the provincial meetings were recorded.

Provincial consultations culminated in a National Land Summit in 2006 attended by around 800 people including the Prime Minister, Ministers, Members of Parliament, chiefs, civil society representatives, men, women, young people, and members of the business and legal community. The Summit was widely covered by print media, television and radio. The land summit resolutions formed the basis for public debate on land issues across Vanuatu.

› The National Land Summit was a key turning point in the land reform debate in Vanuatu.

In Vanuatu it was clear that the legal arrangements over land dealings were not working. There were five main problems with land dealings on customary land identified by the National Land Summit resolutions:

- 1 Leasing without the consent of custom landowners was possible because there were no established processes for identifying custom landowners.
- 2 Ministers of Lands were leasing customary land in their own interests, and without the consent of the custom landowner groups.
- 3 Individual men were leasing customary land whereas under *kastom* land is generally held by a group.
- 4 Leases were being issued without adequate compensation being paid to custom landowners.
- 5 Environmental, planning and cultural sites safeguards were not being met in the leasing of customary land.

Resolutions of the Summit were endorsed by the Council of Ministers in 2007. However, this endorsement did not result in a commitment from the Vanuatu government to pursue land reform, and the Ministerial leasing of customary land continued.

“ After Vanuatu went through its Structural Adjustment reform program in the late 1990s, many of us were worried about the speed with which leases of customary land were being granted by the government without proper processes being followed. Customary land leases were being approved without custom landowner consent or planning approval. We got organised and expressed our concerns to government and succeeded in getting the government to hold a National Land Summit. The Land Summit was attended by a broad cross section of society. The Summit recommended a number of measures — including changes in the law — to address the problem. Despite the Council of Ministers making an executive decision to implement the resolutions of the Land Summit, two years later nothing had been done — there was a lack of political will to make the changes. So I decided to enter politics with the aim of getting these changes implemented. After getting in to Parliament as an Independent I then set up my own party, the Land and Justice Party, to build the numbers in parliament that we needed to make the changes the Land Summit had called for.”

— FORMER VANUATU MINISTER FOR LANDS, HON. RALPH REGENVANU

Ralph Regenvanu has been a key champion of the land reform process in Vanuatu, first in his role as the Director of the Vanuatu Cultural Centre and later as the Minister of Lands. In 2013, Ralph Regenvanu became the Minister for Lands in Vanuatu. He and his team prepared sweeping changes to the legal arrangements over customary land, guided by the resolutions from the 2006 Summit.

As new legal arrangements were developed, a second round of national consultations were held around all the provinces of Vanuatu. These consultations culminated in a second National Land Law Summit attended by around 800 politicians, chiefs, women and youth representatives. This was a genuine process of consultation by the government, resulting in substantial changes to the drafting of the proposed laws. When completed, constitutional amendments and new land laws were debated in parliament before being supported by an overwhelming majority of Members of Parliament. The new land laws were gazetted in Vanuatu in 2014.

- › **The Vanuatu land reform package uses a new ‘*nakamal*’ model for identifying custom landowners. ‘*Nakamals*’ are the local governance structures that exist throughout Vanuatu.**

Under the new *Customary Land Management Act* a *nakamal* is defined as: 'a customary institution that operates as the seat of governance for a particular area. Members of a *nakamal* include all men, women and children who come under the governance jurisdiction of that *nakamal*.'

Under the new laws, people from a customary area will meet as a *nakamal* to identify custom landowner groups and manage disputes about custom ownership, in accordance with the rules of custom. In *nakamal* meetings, decision-making must be made by consensus. *Nakamal* determinations must be recorded in writing; this is termed a 'recorded interest in land'. This recorded interest becomes the basis of identifying custom landowners who need to give their consent for subsequent developments.

The new processes for leasing customary land in Vanuatu are fairer and more transparent. They include:

- two periods of public notification before a lease is issued;
- free, prior and informed consent requirements;
- rights of appeal to the Land Ombudsman;
- establishment of a new Land Management Planning Committee comprised of all relevant agencies, to ensure that leases meet planning, environmental and cultural safeguards; and
- removal of the powers formerly held by the Minister of Lands over state and customary land.

The new land laws ensure women can participate in decision-making. . Women and young people are specifically mentioned in the legislation. New leasing processes include a right for women to be heard in *nakamal* meetings. These rights also extend to any other groups affected by a proposed development.

› **Changes to the Constitution have been made to place identification of landowners under *nakamals* rather than courts.**

Under these changes, only *nakamals* can make final binding determinations to identify custom landowner groups. There are only limited rights of appeal from *nakamals*, and the state court system has a very limited role. Decisions by *nakamals* can be appealed to the Island Court (Land) if:

- the *nakamal* was not properly constituted;
- if a decision was made that did not follow the process outlined in the Act; or
- if there has been fraud.

The Island Court (Land) can set the decision aside, but it must then be returned to the *nakamal* to be re-determined.

Passing jurisdiction to *nakamals* is extremely popular in Vanuatu where people overwhelmingly agree that *nakamals* are the best place to resolve landownership. However, if *nakamals* cannot resolve custom land ownership, then a meeting of a custom area land tribunal can be held. This single land tribunal is made up of experts in *kastom*, and should include women as well as men.

Implementing Vanuatu's land reform package has been a challenging process. The Vanuatu government had to find funds for new administration — a new, larger Customary Land Management Office to oversee the identification of custom landowners by *nakamals*. A new Land Ombudsman has also been appointed to ensure that meetings of the *nakamal* are transparent and accord with customary processes, allow for women and other groups to be heard, and meet the requirements of free, prior and informed consent by custom landowners to any development on their land. All of these new positions have needed funding and training in the new land laws and administrative processes. Training of administrative staff is an essential element in a land reform strategy.

It is too early to say whether Vanuatu's new land laws are a success. They have, however, stopped the land rush in customary land, by removing the powers of the Minister of Lands to lease customary land without the consent of landowning groups.

› **The new legal arrangements on customary land in Vanuatu are currently being piloted, monitored and evaluated.**

Until this process has been completed it is too early to determine how successful the new processes are or what further changes to the laws may be needed. A key issue in the implementation of the reforms is making sure local male chiefs and leaders do not manipulate customary processes to their advantage. This has already been identified as a significant issue in the piloting processes. Finally there is the concern that the Vanuatu land reforms will be politicised and that investor-backed politicians may lobby for the removal of the reform package.

Steps in Vanuatu's pathway for land reform

- 1 **2005.** The Vanuatu Cultural Centre's year of the *kastom ekonomi* raised awareness about land leasing and the importance of land to subsistence agriculture.
- 2 **2006.** Consultations across the provinces and wide-spread public debate of key land issues occurred. The Vanuatu Cultural Centre and the Vanuatu government hosted a National Land Summit which brought together politicians, leaders, chiefs, civil society, including men, women and youth representatives from the provinces. The National Land Summit produced 20 resolutions identifying the key land reforms needed. These resolutions were endorsed by the Vanuatu Government Council of Ministers but not implemented.
- 3 **2013.** Ralph Regenvanu, leader of the newly formed Land and Justice Party, became the Minister for Lands. A key policy of his party was to undertake land reform to meet the resolutions of the National Land Summit.
- 4 **2013.** The Minister of Lands and his team worked with a technical advisory group of key government agencies, lawyers, business community members, women and youth group representatives. Together they worked on a holistic approach to how customary land can be developed
- 5 **2013.** The Minister of Lands, legal drafter and technical advisory group develop models for identifying custom landowners and models for resolving disputes. The model for identifying custom landowners involves passing jurisdiction to customary institutions (*nakamals*) to determine the legitimate custom landowners for an area of land.
- 6 The Minister of Lands and the President of the Malvatumauri lead genuine, broad-based consultation on the suggested models for identifying custom landowners and managing disputes. Provincial and national consultations were attended by the legal drafter with subsequent substantial changes made to the laws. Models were revised and then debated at a National Land Law Summit attended by around 800 people.
- 7 **Late 2013.** New Constitutional changes and legal arrangements for land dealings were finalised. New legal arrangements were passed by parliament and gazette, becoming law in February 2014.
- 8 **2014.** The Vanuatu politicians faced difficulty gaining the support of the land administration bureaucracy and in securing funds for the implementation of the new legal arrangements.

- 9 2015. Piloting of new legal arrangements on customary land is occurring in 20 locations. These pilots will be monitored and evaluated.

FUTURE STEPS

Further amendments will be made to the new legal arrangements based on the review of the pilots.





4 PAPUA NEW GUINEA'S PATHWAY FOR LAND REFORM



- › **In 2005, the Papua New Guinea government identified the need for land reform to promote economic development.**

In August 2005, a National Land Summit was funded by the government. It was organised by a National Summit Coordinating Committee and chaired by the National Research Institute. The Summit was attended by politicians, lawyers, researchers, members of the private sector and representatives from government agencies. A media campaign initiated in the lead up to the Summit meant there was widespread public awareness regarding the aims of the Summit. Senior politicians and the national executive were also included in the awareness raising campaign.

Following the Summit, a working group was tasked to provide direction on land reform and began consultations across four regions of Papua New Guinea. These consultations remain controversial as they were seen as rushed, and reached a limited audience. However, holding genuine nation-wide consultations across Papua New Guinea would require significant resourcing.

In 2006, the working group presented the 'National Land Development Taskforce Report' to government. The final report made 54 recommendations to the government. The report's major findings were:

- There was evidence of widespread corruption and inefficiencies in land administration. The report suggested improving land administration through better electronic record keeping and administration of lease instruments. It also proposed improvements to the planning, valuation and revenue collection processes.
- That the existing land dispute settlement system created conflict between customary and formal institutions and was underfunded and understaffed.

The report proposed improving land dispute settlement through the creation of a single land court system.

- There was a need for new laws around customary land arrangements to access land for development purposes. Incorporated Land Groups were to become 'vehicles for development' with stricter legal requirements around their operation.
- There was a need for pilot projects for fast tracking development on urban land.²

These core recommendations were adopted by the government and developed into a National Land Development Program under the Department of Lands and Physical Planning. The government allocated one million kina initial 'seed' funding to the project. A land development advisory group was appointed to oversee the implementation of the program.

› **The core elements of the National Land Development Program have not been implemented.**

This is in part due to a lack of coordination and capacity amongst key agencies. However, one element of the program amendments to land laws was passed by parliament in 2009 with subsequent gazettal in 2012. These amendments consisted largely of changes to the operation of Incorporated Land Groups.

Incorporated Land Groups

In Papua New Guinea, customary land is largely administered by landowner groups legally incorporated under the Land Group Incorporation Act. Incorporated land groups have the power to enter into legal agreements and receive rent and royalty payments on behalf of the landowning group. Prior to the recent amendments, a growing body of research indicated numerous problems with the practical operation of incorporated land groups. Specifically, land groups were largely incorporated so as to manage royalty distributions associated with forestry, mining and petroleum projects. They have also been associated with a lease-lease back scheme that has involved the leasing of large areas of customary land in Papua New Guinea.

Use of incorporated land groups to access royalty schemes led to a splintering of groups and the creation of spurious 'ghost' incorporated land groups for the purpose of accessing revenue streams. Powerful male leaders were involved in forming their own incorporated land groups. Many incorporated land group directors were tainted with accusations of improper behaviour and royalties were not shared equally among the broader landowning groups.

² National Research Institute, 2007. 'The National Land Development Taskforce Report: Land Administration, Land Dispute Settlement, and Customary Land Development.' Boroko: National Research Institute (Monograph 39).

The recommendations from the National Land Development Taskforce Report led directly to the 2009 amendments to the Land Groups Incorporation Act.

These amendments fall into two broad categories:

- 1 Amendments to tighten the legal requirements associated with incorporation.
- 2 A second category of amendments to tighten administrative requirements around the operation of incorporated land groups.

While amendments to the *Land Groups Incorporation Act* make procedural sense, many appear to be practically unworkable. For example, land groups have been asked to provide new boundary surveys, but it is unclear how the Registrar will have the capacity to assess these surveys. In practice this work requires detailed ethnographic social mapping for the 25,000 or so current incorporated land groups that currently exist in Papua New Guinea.

For the amendments to be effectively implemented, the Registrar would need a large body of staff to oversee the many regulatory reporting requirements for all the incorporated land groups across Papua New Guinea. Ensuring compliance with the new legislation for incorporated land groups located in remote regions adds another level of operational complexity. To date, the government has not provided additional institutional support to implement the new legal arrangements.

› **The new amendments have the potential to cause immense uncertainty.**

The amendments contain a transitional provision, which stipulates that all existing incorporated land groups will cease to exist as legal entities by 2017. During this transitional period incorporated land groups can re-apply for incorporation under the new arrangements. Major development projects across Papua New Guinea may now be vulnerable as the incorporated land groups that they have negotiated agreements with may no longer be operational by 2017. Provisional research into the re-registration of incorporated land groups suggests that these processes may be largely unworkable for landowning groups. Further, land administration bureaucrats are not following the processes established by the amendments.

› **The new land reforms in Papua New Guinea have failed to address the problems associated with the large-scale leasing of customary land without the consent of landowning groups.**

Like Vanuatu, Papua New Guinea in recent years has experienced a land rush for customary land. From 2003–2011 almost five million hectares of land, 11 per cent of Papua New Guinea's total land area, has been leased to national and foreign corporate entities.³

³ Filer, C., 2011. *The New Land Grab in Papua New Guinea: A Case Study from New Ireland Province*. Canberra: State Society and Governance in Melanesia, Australian National University (Monograph 2011/02) p 2.



This leasing of customary land has been largely without the consent of the customary landowning groups. Legally, it has been based on lease-lease back arrangements that allow the state to lease customary land from custom landowners for up to 99 years, and then lease the land back to custom landowners as an incorporated land group or other private companies. Many of the areas leased to private companies under the lease-lease back arrangements (termed Special Agricultural Business Leases) appear to be fronts for logging companies to access timber resources outside of the legal processes outlined in the Forestry Act. In some cases certificates of registration for Incorporated Land Groups have been collected and used as a basis for leasing customary land to the State, and subsequently to a company without the consent of the customary landowning groups.

The customary land rush has been the subject of a Commission of Inquiry in Papua New Guinea. However, to date there have been no changes to the land laws in Papua New Guinea to address the lease-lease back process, or the existing leases over customary land.

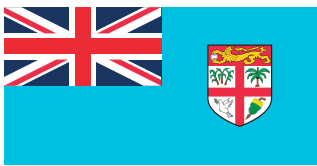
Steps in Papua New Guinea's pathway for land reform

- 1 **2005.** The government sponsored the National Land Summit. The Summit was chaired by the National Research Institute which became the driving agency for land reform. Politicians, business and opinion leaders attended the Summit but the general public were not invited to attend. Significant media attention surrounded the Summit's progress.
- 2 **2005.** A technical working group was formed to advise government. Consultations held across four regions but these were criticised for being too small and too rushed. No broad-based public consultations were held.
- 3 **2006.** The technical working group led by the National Research Institute presented a 'National Land Development Taskforce Report' to government with 54 recommendations.
- 4 **2006.** The government adopted the key recommendation of the report and created a National Land Development Program under the Department of Land and Physical Planning. The government provided one million kina seed funding. A development advisory group was appointed to oversee the implementation of the program.
- 5 **2009.** Amendments to the *Incorporated Land Groups Act* were passed in parliament. These laws were gazetted in 2012. Implementation problems around the core areas of the National Land Development Program arose. New amendments posed significant logistical issues and were deemed largely unworkable.

The Papua New Guinea government is yet to change the lease-lease back arrangements that have led to a major land rush in customary land, typically without the consent of custom landowner groups.



5 FIJI'S PATHWAY FOR LAND REFORM



The Fijian model of customary land arrangements was largely established during the colonial period. Customary land tenure has been fixed since 1874 with the British establishing the rights of Fijians to hold land. Under the Native Ordinance of 1880, alienation of any native land was prohibited. Today, customary land accounts for 88 per cent of all land and is managed by the Native Land Trust Board.

Beginning in the early 1900s, the British colonial government instigated a decades-long process to record and register all customary land in Fiji. The process of recording was led by British appointed Commissioners, advised by local native assessors and involved indigenous Fijians marking the boundaries of their land. The process of boundary marking and recording was controversial and resulted in numerous disputes. The colonial government imprisoned indigenous people who failed to comply with the boundary marking processes.

› **Recording the boundaries of customary land across Fiji was administratively costly and took several decades to complete.**

As part of the recording process, Commissioners also compiled a list of the names of the landowners associated with each area of customary land. These names formed a register of landowners known as the *Vola ni Kawa Bula*. This register continues to operate in Fiji and is regularly updated from the official births and death register.

The colonial government decided to formalise the principles for customary landownership as the process to record customary land continued. In 1939, the British government's Native Land Commission developed a hierarchical governance structure. This applied to all customary land rights across all Fijian Islands and consisted of:

Vanua — headed by *Turaga-i-Tukei*;

Yavusa (tribal group) — headed by *Turaga-ni-qali*;

Mataqali (clan) — headed by *Turaga-ni-mataqali*; and

i Tokatoka (smaller clan).

Under this structure the colonial administration fixed the ownership of customary land with a standard unit of communal ownership, the *mataqali* (clan). This model of customary tenure was criticised by Fijian chiefs as overly simplistic and a misrepresentation of the diverse, multi-layered customary land tenure arrangements present across the islands. Both the *mataqali* governance model and the recording process were deeply controversial at the time of implementation by the colonial government.



While Fijian chiefs originally disputed this *mataqali* model of landownership, it has now become institutionally embedded as the basis of customary landowning arrangements in Fiji. This tacit acceptance has been directly linked to the authority accorded to chiefs under the Native Land Trust Board. The creation by the colonial government of the Native Land Trust Board in the 1940s substantially increased the control of chiefs over customary land.

The Native Land Trust Board has the power to lease land on behalf of *mataqali* groups, as well as to negotiate rental payments and charge administrative fees. Leases granted by the Native Land Trust Board are registered under a Torrens Title system, thereby granting indefeasible title to any lessee. Special provision is made for the distribution of rents and lease premiums, with not more than 25 per cent deducted to pay for Trust Board administration costs.

› **Recent land reforms in Fiji have centred on amendments to the operation of the Native Land Trust Board and on the creation of a new land bank as a rival institution to the Board.**

In 2010, the Fijian government issued a Native Land Trust Amendments Decree that made two major changes to the operation of the Native Land Trust Board so as to substantially reduce the power of chiefs:

- 1 The Minister of Lands now chairs the Board and chiefly board members have been removed and have been replaced by politicians and political appointees.
- 2 There have been changes to the distribution of land rents by the Board. The Board now follows a new 'equal distribution' principle, which has resulted in substantially reduced payments to chiefs. However many of these 'equal distributions' were not subsequently made; in part because 30,000 landowners do not have the required electronic bank accounts, which includes hundreds of chiefs. The Board also faced difficulties in determining which *mataqali* members were still alive, in spite of regular updates to the landowner register. These problems with distributions of land rents has meant that many landowners have not received any payments.

Fijian chiefs have criticised their removal from the Native Land Trust Board. In 2012 the Fiji Native Tribal Congress reported to the United Nations Committee on the Convention on the Elimination of Racial Discrimination that the government has breached its fiduciary obligations to indigenous Fijian landowners. The Congress argued that the government controlled Board had leased customary land at substantially discounted market rates. The report states government discounts have been provided to promote development resulting in insufficient payments being paid to indigenous landowners.⁴

⁴ Fiji Native Tribal Congress. *Supplementary Report to the Committee on the Elimination of Racial Discrimination for the Republic of Fiji*, Presented to the United Nations CERD Committee, July 2012. p. 44.

Creation of the land bank: The 2010 Land Use Decree

The Land Use Decree of 2010 establishes a process by which *mataqali* landowning groups deposit their customary land in the land bank administered by a Land Use Unit within the Ministry of Lands. As part of this process the Land Use Unit is responsible for customary land valuation, issuing and renewing leases, and collecting rental income. Leases issued by the Land Use Unit are for a term of 99 years.

The Minister of Lands — rather than landowning groups — signs off on all land bank leases and the specific terms of the lease. Landowners then receive whatever payments have been negotiated on their behalf by the government.

The government's Land Use Unit now holds around 14,500 hectares of the land bank, which it claims will be used for mining and tourism projects.

The first land bank project was Arum Explorations investment in a bauxite mine in Bua. The Bua Bauxite mine remains controversial, with many landowners claiming that they are yet to receive any royalty payments from the mine. There has also been some concerns that the government has not been monitoring the amounts of bauxite extracted from the mine. These issues touch on the new Constitutional arrangements established by the government, which state that landowners are entitled to a 'fair share' of royalties from the state. What a 'fair share' means, however, has not been defined.

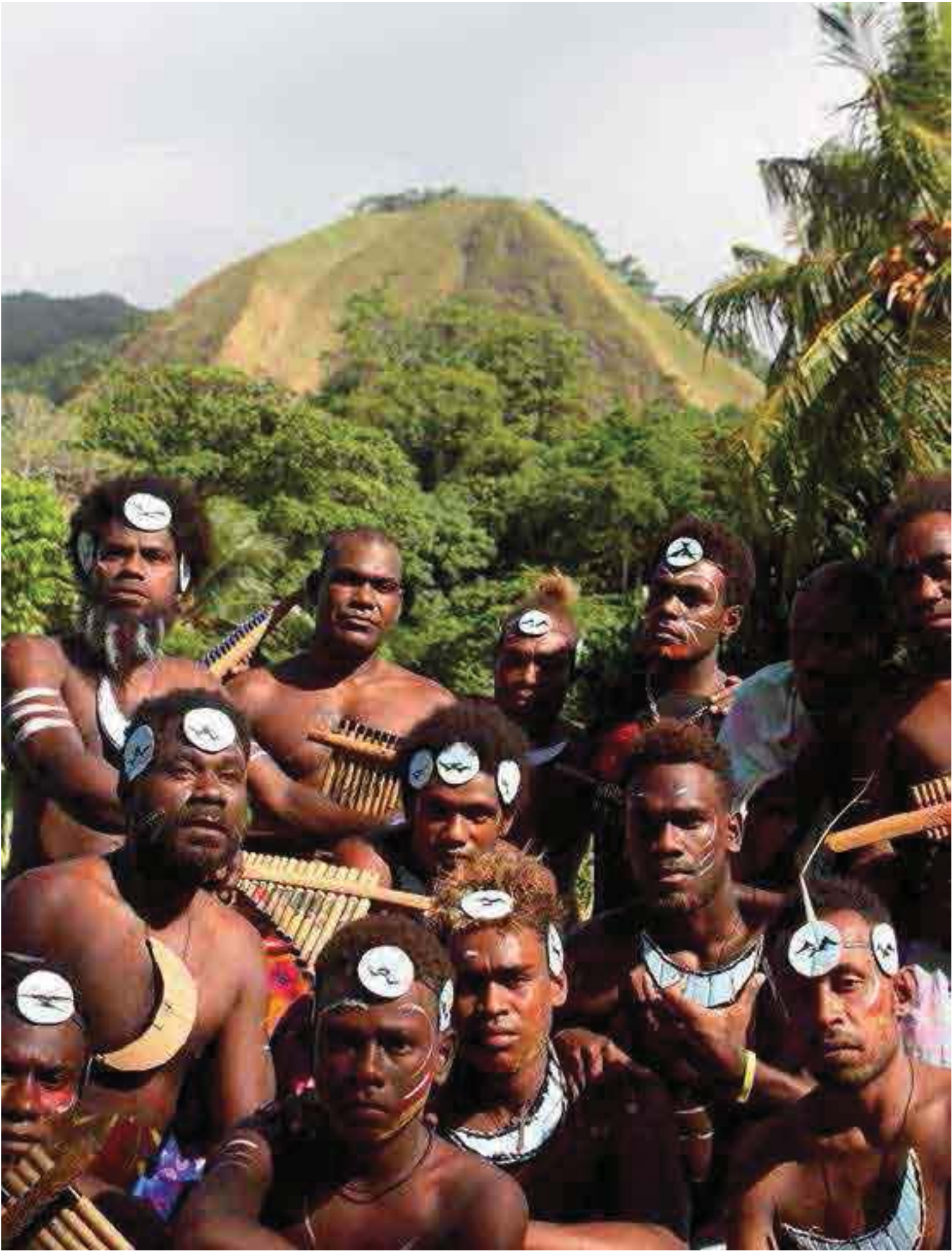
While the decree states that leases will be issued in the best interests of landowners, this is balanced against the 'wellbeing of the economy'. The effect of the Decree is to remove any legal rights from landowners to challenge any of the terms or conditions entered into by the Minister of Lands on their behalf. The Decree specifically states that there is no legal right to challenge any decision by the Minister of Lands made under the Decree or any term or condition of any lease issued under the Decree.

These principles place decisions made to lease land, and the terms of any lease issued, beyond the scrutiny of the legal system. The effect of the Decree is therefore to create wide powers for the state, and the Minister of Lands specifically, over the leasing of customary land. The experience from Vanuatu suggests that such wide powers held by the Minister of Lands can lead to leasing that is not in the best interests of the landowning group.

The decree also has the legal effect of over-riding the operation of the *Native Land Trust Act*.

Steps in Fiji's pathway for land reform

- 1 **1870s-80s.** The British colonial government established the rights of indigenous Fijians to own land and prohibited the alienation of customary land (termed 'native land').
- 2 **Early 1900s.** The British colonial government began a process to record and register all customary land and landowners in Fiji. This process took several decades. Under this process boundaries of customary land are marked and the names of all landowners are recorded. The process of recording is extremely controversial.
- 3 **Early 1900s onwards.** The recording of all landowner names forms the *Vola ni Kawa Bula* register which continues to operate in Fiji.
- 4 **1939.** The Native Land Commission develops a fixed hierarchical governance structure to apply across all customary land. The new governance structure fixed the ownership of customary land with a standard unit of ownership, the *mataqali* clan group. This was initially strongly opposed by Fijian chiefs.
- 5 **1940s.** The Native Land Trust Board was created. It has the authority to lease land on behalf of *mataqali* groups as well as negotiate rental payments and charge administrative fees.
- 6 **2010.** The government changed the operation of the Native Land Trust Board (renaming it as the *iTaukei* Land Trust Board) and government and political appointees now control the Board. The government also removed the chiefs from the Board and changed the way rental income is distributed to an equal allocation to all members. Large amounts of rental income remain unpaid.
- 7 **2010.** The government created a land bank of customary land that is managed by the government's Land Use Unit. Leases issued by the Land Use Unit are for a term of 99 years. Judicial processes cannot be used to review leases and lease terms. This gives the Minister of Lands, Director of Lands and Land Use Unit significant power over customary land.



PART THREE

BUILDING A SOLOMON ISLANDS' PATHWAY FOR LAND REFORM

Solomon Islands must build its own unique pathway to land reform. This last part of the paper will describe four key features of this pathway.

- 1 Land reform is a process that must be led by government, and informed by genuine consultation.**
- 2 The pathway to land reform must be built by government walking alongside landowners and businesses.**
- 3 The pathway to land reform must be built by government walking alongside women and young people.**
- 4 When it is time to write new land laws, the laws must fit the cultural and social context of Solomon Islands. This paper will conclude by looking at some possible first steps on Solomon Islands' pathway for land reform.**

“Any approach to customary land must be a non-adversarial approach. If you take an adversarial approach, you will just trigger a dispute and take an unwanted road — and it will take 30, 40, or 50 years to resolve the dispute. I thought Judge Phillip had a sensible approach with his Land Commission work in the 1920s. He didn't approach land reform in an adversarial way, he worked hard to bring everyone together. He engaged all the leaders to decide on leadership, ownership and boundaries. Of course, we need to modernise the approach, but if this process of cooperation and consultation worked in the 1920s, it could work again today. I believe the registration of customary land must be voluntary. When I was Prime Minister, I recommended a project on customary land arrangements that was voluntary, to avoid an adversarial approach. The approach of recording and acquiring everything might take up to 60 years, because everything needs to be codified. Time is of the essence, we must look beyond where we are today.”

— FORMER PRIME MINISTER, GORDON DARCY LILO



6 GOVERNMENT MUST LEAD THE WAY

› The government must lead the process of land reform in Solomon Islands.

Individual champions for reform are not enough. For reform processes to be sustainable they must be led by government and any new arrangements must be embedded within government.

This means that champions for land reform must also be based in government. Political will is needed to create the appropriate changes to legal arrangements. These legal and administrative changes will also need the support of the people involved in land administration at the national and provincial levels, so champions will be needed within key government agencies at all levels.

Developing a policy vision for how development will occur on customary land must be a first step in any land reform pathway. Alternative approaches to the development of customary land include:

- 1 a process that starts with a development application for a specific project; or
- 2 a process that starts with recording and registering large areas of customary land.

These processes are not mutually exclusive, and the government may choose a combination of these two approaches, or another entirely different approach.

Before writing new land legislation, the government may choose to pilot various approaches to development to see what works and what does not. Piloting different models across various locations in Solomon Islands could provide a good evidence base for understanding what land reforms are needed. Piloting can also reveal where steps in the process work, and where they need adjustment for improvement.

Two approaches for the development of customary land

Pathway 1 : Development application first (Vanuatu model)

ADVANTAGES

- Development applications assessed before landowner identification. This means that resources are spent on identifying custom landowners only where there is a viable development application.
- Customary land where there is no development application can simply be held as customary land. No changes are needed.
- Developments in Melanesia need an ongoing social licence. Identification and consent of the custom landowner group helps to create this social licence.

ISSUES TO CONSIDER

- New development process could be delayed by the identification of custom owners.
- Land disputes need to be resolved in a timely manner so that development is not delayed.
- Government agencies involved in overseeing the identification of custom owners for an area of land must be transparent and accountable.
- The whole landowner group, not just individual male leaders, must consent to development projects.

Pathway 2 : National recording and registration of land-ownership (Fiji model)

ADVANTAGES

- National program to record and then register customary land so as to enable development.

ISSUES TO CONSIDER

- National recording is very expensive. Registration may not be needed for development.
- It is usually extremely difficult to resolve boundary issues between different groups of landowners.
- Recording may be divisive and could lead to conflict.
- Who actually conducts the recording will be important for ensuring a good process
- Any individuals/groups whose rights are not adequately recorded may be able to take legal action against the state.
- Recording/registering of customary land will not be enough by itself to create development. Development still needs good road access, access to markets and the creation of an ongoing social licence.
- Possible conflict of interest between government involved in recording customary interests and government promoting investment.



› **Whatever approach the Solomon Islands government decides to take, it must build a broad-based public consensus around that approach.**

This will create a pathway for land reform that is free from political division and conflict. To build this pathway, the government must invest in meaningful and genuine consultation around directions for land reform.

In creating a pathway for land reform the government must balance the needs of different groups: custom land-owners, businesses and civil society. In creating a land reform pathway, government must be fair, neutral and not beholden to particular interest groups. The government must be able to outline a process for land reform that shows that it will act in good faith to address the interests and concerns of all groups.

Creating a holistic approach to land reform means making sure all government agencies are on the same path and have a clear sense of the policy goals. It also means creating clear links in the development process between the provincial and national governments. Provincial officials are dealing with urgent land issues on a daily basis. National governments must streamline processes and provide funding so as to enable their working in partnership with provincial governments.

“ We are dealing with land issues every day. Land issues are a big problem. Planning power over lands is vested with the Premier and this has caused a lot of problems. Land has been passed to developers that should not have been. These laws need urgent amendment. We also have big squatter problems. The squatters are not following kastom. The population is getting bigger and needing services. The government wants to expand the town boundary on to customary land. We don't agree with their approach. Guale people must benefit out of development on our land. In our province on customary land we have got a mine, agricultural projects, oil palm and a hydropower project. We need more agricultural projects — coffee, coconuts — and we need better road access. And we want tourism projects.”

— GUADALCANAL PREMIER, HON. BARTHOLOMEW VAVANGA

“ Every day people come and see me about land issues. They don't want to talk about government, they want to talk about land. In my opinion the main problem we encounter on Malaita from customary land development is benefit sharing. I think this one is the main issue and central to all development. The idea of development is over used in our country. When people hear the word 'development' the first thing that they think about is money. When the discussion is about money then the next issue is how to share the money between all the landowners. In our kastom no one person owns the land, it is the tribe that owns the land — a group of people together have the rights to the land. When a logging development comes then only a few men — a chief or one man — really benefit. Even people who are not the landowners might benefit from the logging. This happens all the time. Then there are big disputes.”

— MALAITA PREMIER, PETER CHANEL RAMOHIA

“ We need development in Malaita. This is our number one priority because we want Malaitans to be able to work and live in Malaita. The province has created five development zones across Malaita. In each of these areas there is already customary land that has been identified for registration and there are other areas of land that are already registered. These need to become our economic growth centres. The approach of the Malaita Province is unity. Let us all be united and resolve to make development happen. We need to re-open the airport and get the economic growth centres working. We have already found some investors and donors that are ready to work with us. We want to create a hydro project to make power cheaper and encourage further development in Malaita. The provincial government can work directly with landowners. This is a better model than the national government coming in. We know who the right people are, the right chiefs to talk to. We know who the landowners really are. Sometimes the national government just bypasses us, and it is not helpful.”

— MALAITA MINISTER OF LANDS, HON. MARTIN FINI

One of the big challenges for provincial and national governments is managing the tension between promoting development and regulating how development takes place on customary land.

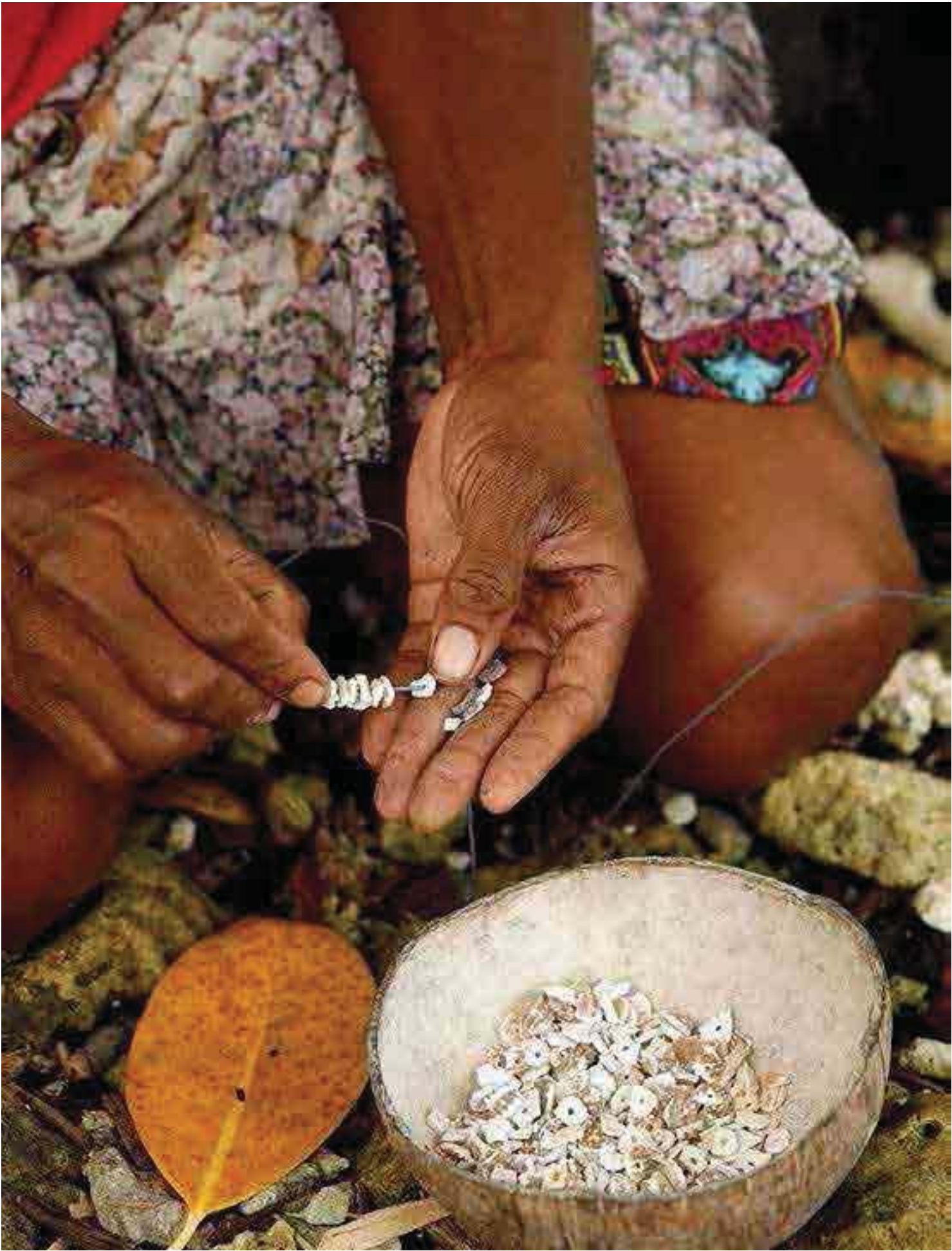
- › **Where a government is trying to regulate land dealings and also promote development this can cause tensions, potential conflicts of interest and even corruption.**

In developing a land reform approach, the government must be clear about the role that it wants to play.

As the regulator, government agencies are involved in making sure legislation is complied with and enforced. In this role the government has an obligation to make sure that custom landowner groups are consulted and consent to development taking place on their land.

New land reform legislation must therefore be clear about the role of the state, clearly distinguishing between the role of regulating land dealings, and the role of promoting development. Legislation must be carefully drafted to ensure that there are no perceived or actual conflicts of interest in the role that government representatives or agencies will play. For example, if the government's priority is to play an investment promotion role, then enforcement and regulation needs to be removed from government and undertaken by an independent agency. The Vanuatu government has attempted to resolve these tensions through the creation of a new independent Land Ombudsman. The Land Ombudsman will ensure that a proper process of consent by the custom landowner group to development is followed.





7 WORKING ALONGSIDE LANDOWNERS AND BUSINESSES

Government must create a pathway for land reform that balances the needs of custom landowners with those of businesses. Landowners need to be adequately consulted and receive a fair share of the benefits from development. Business in Solomon Islands needs transparency in processes, accountability of government and the security of being able to operate long-term.

Secure land tenure arrangements on their own are not enough to create development projects. Development projects also need appropriate infrastructure and access to markets, elements not always present across the archipelago. Creating sustainable development requires partnerships between landowners, investors and government.

Building successful businesses in Solomon Islands requires establishing social licences to operate. Developments that operate without an ongoing social licence can cause conflict. Across Melanesia there are examples of developments that caused large-scale resource conflict. Solomon Islands is no exception. The history of investments in Solomon Islands is littered with accounts of developments that have failed because landowner groups have no longer supported business operations.

A social licence will be granted to a business where the values of landowners and other affected groups are reflected in the commitments of the business.

- › **Building a social licence to operate means business must address land-owner concerns during the negotiations around a development. Maintaining an ongoing social licence to operate involves engaging in an ongoing, dynamic relationship with landowners and other groups as expectations and perceptions can change over the term of a development.**

Maintaining a social licence to operate means ensuring that landowners and communities are consulted. It means that their opinions are taken into account. It means that they are receiving a fair benefit from the development and that any benefits are being fairly distributed.

Creating a social licence for successful agricultural production on customary land: the production of oil palm

The history of oil palm plantations on the Guadalcanal Plains illustrates the importance of businesses developing a social licence to operate. It also shows that registering customary land is not necessary for certain types of development.

After independence, Solomon Islands Plantation Limited (SIPL) produced oil palm on the Guadalcanal plains on formerly alienated land. By the late 1990s, SIPL had 6300 hectares of land under cultivation and employed 1800 people, around 65 per cent of whom were Malaitan (with an estimated population of around 8-10,000, including dependents).⁵ The SIPL plantation became a major location of conflict during the Tensions because Guale landowning groups claimed that they were not adequately benefiting from the oil palm operation. There was no longer a social licence to operate for SIPL and the company shut down its oil palm operations.

In 2006, Guadalcanal Plains Palm Oil Limited (GPPOL) began operating in Guadalcanal on registered and customary land. In negotiations with the company over the resumption of oil palm production, local Binu landowners expressed a preference for an outgrower scheme for landowners, whereby they could plant oil palm on their own customary land. Following these requests, the company developed a new model of outgrower production based on customary land use agreements. The expansion in GPPOL oil palm production has occurred based on these agreements made to plant oil palm on customary land.

Facilitating oil palm production on smaller blocks with customary agreements may have reduced the potential for conflict. Economic benefits are shared more broadly through the custom landowning group than under previous operational arrangements. The company also engages in local community projects, such as building rooms for local schools and providing water supplies to local villages. From the perspective of the company, these small community projects make good business sense as they ensure ongoing local support for company operations. In short, they maintain the social licence to operate.

⁵ Allen, M.G. 2012, 'Informal formalisation in a hybrid property space: The case of smallholder oil palm production in Solomon Islands'. *Asia Pacific Viewpoint*, vol. 53, no. 3, p.305.



Development that operates without a social licence is likely to fail or cause conflict amongst the landowner group. Across Melanesia, landowner groups often have a number of common complaints about bad developments.

- 1** That there are not adequate benefits or employment opportunities for landowners from developments.
- 2** That royalties from development are paid to a few powerful men rather than the whole group.
- 3** That the development has environmental implications that were not disclosed or that are not being adequately regulated by the state.
- 4** That the development has created local conflict between group members.
- 5** That the development has brought with it unanticipated changes to social practice through, for example, prostitution or alcohol consumption. When these complaints grow, they can become a source of conflict and in some cases the development becomes untenable.



Logging operations: The failure to create a social licence to operate

In Solomon Islands logging operations on customary land are granted licences under the *Forest Resources and Timber Utilisation Act*, (Cap 40). Licences are granted to logging operations that fulfil the Timber Rights Application Process (TRAP) made up of four separate forms. In practice, brokers working on behalf of logging operations will often make deals with a few powerful male landowners.

“ Across Solomon Islands brokers play a central role in obtaining logging licences. Brokers represent logging companies in negotiations with local communities to gain access to customary land. Negotiations by brokers over timber rights mean that customary land rights are never properly defined. There are no checks and balances to ensure the correct custom owners of the land have been identified, or their consent given. The Provincial Government does not vet the process, no one makes sure that custom landowners have consented to the logging on their land. The government merely puts up a public notice for access to the forest for timber. Concerned parties can respond to the notice but this rarely happens because people either don't know about the notice, or don't know how to lodge an objection to the logging licence. The experience of logging operations in Solomon Islands is that many times logging will go ahead without sufficient information being given to the custom landowner group, and without most members of the custom landowner group consenting. The current process needs review.”

— JOSEPH FOUKONA, RESEARCHER AND LEGAL SCHOLAR

Courts in Solomon Islands have pointed out some of the problems with current Timber Rights Application processes. Courts have stated that current legislation does not protect the resources of the rightful custom landowners because it creates an avenues for 'people with tenuous claims, or even no claims at all, to become the principal beneficiaries' of logging operations.⁶

The failure to create a social licence to operate means that logging can remain locally contentious and divisive. Examples exist across Solomon Islands of logging operations being damaged or shut down by local custom landowner groups. These ongoing problems suggest that a review of the legislation is needed so as to ensure prior, informed consent of custom landowner groups to any logging operations taking place on their land.

⁶ Judgment of Chief Justice Ward in *Tovua v Meki* [1988 - 89] SILR 74.

- › **In Solomon Islands, developments fail because of landowner perceptions about the unequal distribution of benefits. Problems with distributing benefits can both undermine the social licence of the business to operate and be a major source of conflict within the landowner group.**

The problem of the unequal flow of benefits flows directly from the 'trust model' that is a central element of the Land and Titles Act. The registration of customary land in Solomon Islands involves the creation of a Perpetual Estate held by trustees.

Under the current registration processes, three to five trustees are appointed and registered as trustees to represent the interests of the broader landowning group in land dealings, including land acquisition processes. Powerful local men regularly manipulate the 'trustee' role so they can access the income flow from developments. In practice, these trustees regularly fail to distribute benefits to the broader customary landowning group.

Across Solomon Islands, powerful male leaders appointed as trustees assert claims of landownership and take the overwhelming share of benefits from development. Powerful men are involved in the land acquisition negotiation, are the signatories to documents and agreements, and act as the recipients of royalties.

“ The legal mechanism of registration and the creation of trustees can be premised on an ulterior motive, to create private ownership of land. Rogue trustees can cause this disastrous situation, even at the expense of creating landless individuals.”

— GENESIS KOFANA, PRIME MINISTER'S OFFICE

Ownership claims have meant that the 'trust model' has resulted in a distortion of customary tenure rights. The model affects decision-making on customary land: powerful male trustees make most decisions to the exclusion of women, young people and other men from the landowning group. Under the trust model, benefits are not fairly distributed and decision making about customary land is not made by the broader landowning group.

“ The problem with trusteeship is that it is all men who are trustees. When it comes to land people listen to men more than women, but the men make bad decisions. We must learn to listen to women. We need to change this.”

— FORMER PUBLIC SERVICE OFFICER, HILDA KI'I

Creating a social licence by changing the compulsory acquisition and trust model: Tina Hydro

The proposed Tina Hydropower development is situated on the Tina River in North Guadalcanal. Around 430 hectares of land has been required for the hydroelectric scheme. The economic basis of the project is that hydropower can be produced and sold to the Solomon Islands Electricity Authority for significantly less than the cost of diesel production (currently around SBD \$1 million a day). In 2015, Korean Water won the tender to build the hydropower facility and work will commence in 2015-2016.

It's estimated that production of hydropower at Tina will last around 100 years so creating and maintaining a social licence to operate is essential to the success of the project. The managers of the Tina Hydro project adopted a new approach to land arrangements and benefit sharing, leading to the successful negotiation of a social licence.

The project has had to adapt some of its initial practices to create a social license to operate. Initial negotiations over the project saw large payouts from the Solomon Islands government (over SBD \$3 million) to a Landowner Council consisting of 27 local tribal groups, including payments to individual leaders of SBD \$500 a day to attend meetings, with little movement on the identification of landowner groups.

Over time, a new landowner identification process was adopted by the project, led by local Bahomea chiefs meeting unpaid and largely unassisted. Under this new process, meetings were held in the Tina area rather than in hotels in Honiara, thereby attracting different participants. Eventually four main tribal landowning groups were identified.

During the consultations, landowners raised opposition to the usual land acquisition and trust processes. Many local landowners had first-hand experience of the Gold Ridge mine as well as various logging projects undertaken in the area. Landowners raised concerns that the trust model resulted in a few male leaders becoming property holders and therefore the beneficiaries from the development, rather than the broader tribal landowning group.

In response to the issues raised with the trust model, Tina Hydro has developed a new approach under which the perpetual estate is held by a core company with 50 per cent of the shares allocated to the Solomon Islands government and 50 per cent held by the four tribal groups. The company structure uses smaller companies to hold tribal shares, rather than any form of trust. In addition to the company structure, royalty payments will be made to landowners as a proportion of the Purchasing Power Agreement.

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Land tenure for the project was negotiated through a long and detailed consultation process. The tribal groups voluntarily gave their land to the government for compulsory acquisition. Following free, prior and informed consent safeguards, tribal landowner representatives signed off on a Process Agreement that details the value of the land; the details of the core company arrangements; the agreement that the core company would hold the land title; and the agreement to set up the four tribal companies.

› **The trust model creates unfair outcomes and is in need of urgent review.**

As a customary land registration process, the trust model is undermining the social licence of business to operate in Solomon Islands. This is because powerful male leaders who are then able to control any benefits resulting from the development hold property rights. Land reform in Solomon Islands should address these pressing issues so as to allow for sustainable economic development.

Problems with the trust model mean there is an urgent need to reform the Land and Titles Act by considering alternative models for group decision making over customary land. One way of ensuring good collective decision making over customary land is by correctly identifying the custom landowner group; and by ensuring that negotiations with the group follow free, prior and informed consent guidelines. Negotiations based on free, prior and informed consent principles will also ensure that businesses have a social licence before commencing their operations.

› **Free, prior and informed consent by landowning groups is usually a requirement of international donor financing.**

Developments in Solomon Islands that wish to access international donor finance must meet the safeguard standards set by these financiers. The proposed Tina hydropower project will receive funding from the World Bank thereby triggering many of the Bank's safeguarding mechanisms. These include safeguards relating to: the informed consent of indigenous people, protection of the environment and cultural heritage, and standards for land acquisition and resettlement. In addressing these safeguards, the Tina hydropower project has had to review the compulsory acquisition process and the trust model.

“ In some parts of Solomon Islands, there’s a patrilineal system of customary land, in other parts of Solomon Islands there’s a matrilineal system. What all Solomon Islands would agree on, is that land is like a mother for us; all Solomon Islanders would have that understanding.

Around 90 per cent of all land is customary land, only about 10 per cent is alienated. But that concept of customary ownership has been misused, especially by smart ones. When you go deeper, there’s sub-clients who own the land, even if the tribe is the umbrella body.

Customary land ownership arrangements shouldn’t be a blockage for development. Unfortunately, because nothing is written down, there are problems. That’s the failure of the Land Recording Bill. Tribes want to keep their genealogy secret. All these problems come out when you want to develop the land.

That’s a challenge, because disputes about land usually end up in court. That makes the situation worse. And investors don’t have security, and security is very important for investors.

When I was the Prime Minister from 2001-2006, I worked with John Sullivan to develop a new model for customary land. The issue in my mind was, how can we have development on customary land in a way that doesn’t start up the Tensions again? Because land was definitely one of the causes of the Tensions.

My idea was, we must leave behind this system that developed in the colonial times. That system was to acquire land for the government, then the government would lease it out to the investor. In one sense, on paper, that may look more secure. But people didn’t allow their land to be used in this way, because landowners would only get a tiny share of the benefits.

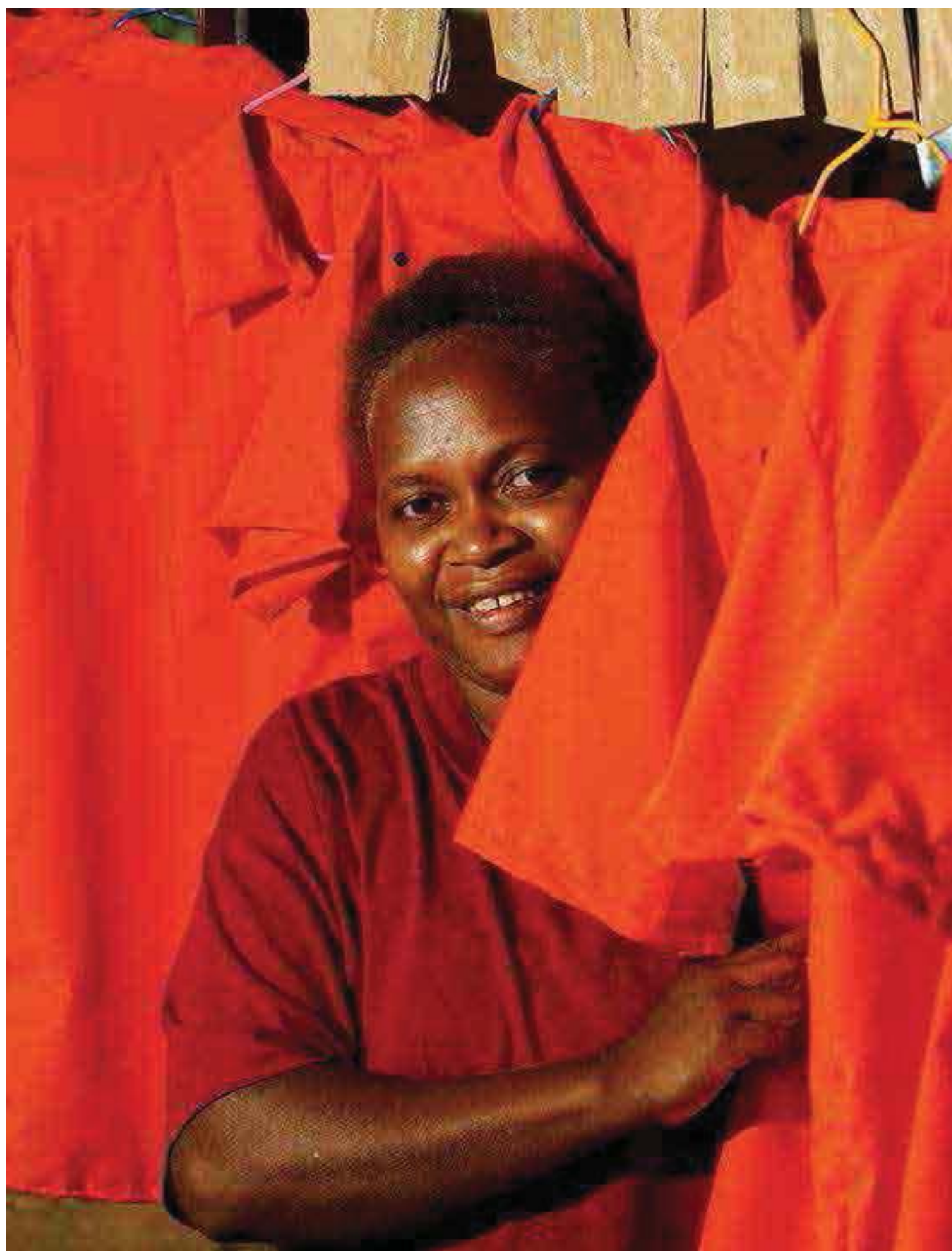
My idea was to create a new model, and the trial for this was GPPOL. The landowners and investors could deal with each other directly, you didn’t have to have the government involved anymore.

The government, particularly the Ministry for Agriculture, and donors could come and give advice and assist landowners. But really, the most important relationship was between landowners and investors.

In this way, it was possible to achieve a win-win. Landowners got something, more of the benefits from the investment. The investor, who spends a lot of money, gets the security needed to make a profit. If an investor spends million on investment, of course they need to make a lot of money to make it worthwhile. The government gets the benefit of more tax as a result of growth and a successful investment.

— FORMER PRIME MINISTER SIR ALLAN KEMAKEZA





8 WORKING ALONGSIDE WOMEN AND YOUNG PEOPLE

Women and young people must be included in decision making processes so as create fairer outcomes from development. Across Melanesia women and young people are largely excluded from decision-making and benefit sharing from development.

- › **In Solomon Islands the trust model means that women and young people are often excluded from decision making with respect to logging, leasing and mining development on customary land.**

Even when development occurs on customary land that is held matrilineally, women are largely absent from decision-making. Being absent from decision making means that women rarely receive equitable benefits from logging, mining and other developments that take place on customary land.

“Women have got land rights but they cannot speak because of kastom. Most women don't attend land meetings. In some places women don't want to go to land meetings because the men say land is men's business. Sometimes women are just too busy with their work to go to meetings. Women don't often talk in land meetings. But sometimes if a woman has been helpful in the tribe or if their father has given his daughter land, then a woman may speak. But mostly it is the men who speak, it is rare to see a woman speak.”

— CLARA RIKIMANI, WOMEN'S DEVELOPMENT OFFICER, MALAITA PROVINCE

Women in Solomon Islands want more involvement in decision-making around developments on customary land, particularly where the land is held matrilineally. Axiom mining has taken several steps to make sure that local land-owning women are included in the decision-making process around the mine.

Listening to women: Axiom mining

The proposed Axiom nickel mine is located on Isabel where land is held matrilineally. The proposed nickel mine site and surrounding area has been the subject of a long running court case based on alleged flaws in the process of acquiring the customary land and appointing trustees. As part of Axiom's ongoing negotiations for landowner support, the company has created a separate Kolosori Vaivine Committee for women.

“ The women's committee get to talk and discuss issues of concern to them and their families. It gives Kolosori women a voice to express their views about the development of the mine. The committee allows Axiom to hear from the women, how Axiom can provide better service delivery to women and children and can be used for awareness raising. The committee can also be used to address any gender disparities and environmental issues arising from the mine. Women's representatives on the Kolosori Vaivine Committee represent the five main tribes of the Kolosori land owning group, similar to the male trustees of the five main tribes. For example, a Kolosori Vaivine Committee requested Axiom provide financial literacy workshops for landowners in the area. In terms of future directions, the Kolosori Vaivine Committee hopes to create a savings club for women so that they can better manage any funds earned from the mine.”

— DR. ALICE POLLARD, RESEARCHER AND GENDER SPECIALIST

The Kolosori Vaivine Committee appears to provide a useful avenue in making Axiom more accountable to women. However, it is clear from the governance arrangements that men still hold all the positions of trustees representing the interests of the five tribal landowning groups.

› Solomon Islands youth are increasingly expressing their frustration that powerful local leaders are capturing the benefits from development.

Guadalcanal youth describe the leasing of customary land by their fathers and uncles to settlers as the sale of 'their birthright'. Leasing of customary land can causes internal conflicts within the landowning groups due to the unfair distribution of benefits from leasing and other development. These internal sources of conflict appear to be one of the driving forces in the militarisation of young men during the Tensions.

Consultation around land reform pathways must include women and young people. Engaging women in the land reform process may require creating safe spaces where women are given the opportunity to contribute constructively, expressing their views and demonstrating their knowledge.



A separate consultation strategy should also be developed for engaging young people in the consultation around land reform. Regional youth organisations are increasingly mobilising through social media and this may provide a useful platform for engagement.

For the consultation process to be comprehensive, the Solomon Islands government must ensure that women and young people are given the opportunity to be part of the decision making processes. This could involve including women and youth in technical land reform committees, or seeking separate women and youth group submissions to a land reform committee.



9 WRITING LAND LAW TO FIT SOLOMON ISLANDS

Solomon Islands will need its own unique land law. Law needs to be shaped to fit the context of Solomon Islands. Writing land law to fit Solomon Islands means understanding the following principles:

- 1 Legislation must reflect the cultural diversity of Solomon Islands.
- 2 Skeletal legislation can be used that creates a framework process, while also allowing flexibility for local arrangements in different areas.
- 3 Legislation needs to create a consistent process across all laws.
- 4 New legislation should limit ‘forum shopping problems’ where parties can appeal from one institution to another in the hope of winning a land dispute.
- 5 If customary institutions are viewed as the best institution for resolving land disputes, then they may need the jurisdiction to make binding determinations in law, rather than judging a matter and then having it appealed.

“We cannot impose legislation from outside. We need to understand local contexts, local *kastom* and local practices of managing customary land.”

— FORMER LAND COMMISSIONER, RUTH LILOQULA

Solomon Islands is extremely culturally diverse, with over 70 different language groups; *kastom* practices therefore differ across the islands. Different islands have different landholding arrangements. This is particularly important when discussing law that details arrangements and property rights with respect to land. Land is foundational to *kastom*, and to Solomon Islanders’ way of life.

“ Land traditionally is very important to Isabel Communities, it contains their heritage and links to ancestors. Today land continues to support them in all aspects of their day to day livelihoods and is seen as a source of future prosperity.

People would like to see land reform that can recognise the unique customary practices of each area, support development and provide security for generations to come.”

— ISABEL PREMIER, JAMES HABU

› **Legislation can be drafted to allow for a diversity of local arrangements across the islands.**

While in Vanuatu *nakamals* exist across the islands allowing for a single customary institution, in Solomon Islands this may not be the case. In some areas the Houses of Chiefs may work well, in others they may not be operational. Consultation needs to focus on what institutions people in different localities identify as being the best to identify custom landowners and resolve land disputes. Models for identifying landowners and resolving disputes could look different from one locality to the next, but there will need to be some common principles between them.

One way of drafting legislation to allow for different cultural contexts is to draft ‘skeletal legislation’. This is legislation that creates a skeleton framework of process that must be complied with, but allows for diversity around what the process looks like depending on cultural practice. Skeletal legislation was used for the new land laws that operate in Vanuatu. So while Vanuatu land laws say that a *nakamal* must meet in accordance with customary practice, the laws are not prescriptive about what these customary practices are. Allowing for local customary groups to determine their own practices can also be risky. So Vanuatu’s new land laws include appeal rights to a Land Ombudsman if processes are not completed properly.

Effective land reform also means ensuring consistency across laws, and across laws that apply to different sectors. Any new legal arrangements over land should also flow into existing forestry and mining legislation. Without this consistency across all sectors there will be an opportunity for legal and administrative loopholes to be created and for legal processes to be manipulated.

New legislation must try and avoid the problems of forum shopping where groups appeal from one institution to another in the hope that they will get a decision that favours them. The court system in Solomon Islands is clogged by land matters that are being appealed. Appeals cost time and money. There is a huge existing backlog in land cases before courts. Courts are based largely in urban locations and are expensive and inaccessible to large groups of people who either live remotely or have limited access to cash money.

› **Effective land dispute resolution means resolving disputes in a timely manner so as to promote development and reduce conflict between landowner groups.**



New land laws can create links between customary and state institutions to more effectively manage land disputes. This can be done by:

- passing jurisdiction to customary institutions;
- creating a 'hybrid institution' that is part court and part customary (like a land tribunal); or
- by creating clear links between customary institutions and state courts.

In each case there should be only limited rights of appeal from the original jurisdiction to allow for the timely resolution of land disputes. These must be balanced against rights of appeal against process that does not accord with procedural fairness.

Where customary institutions are seen as legitimate institutions to resolve disputes, then they need to be given jurisdiction to make binding determinations. Without this jurisdiction, matters that go before customary institutions can just be appealed, undermining the customary institution and resulting in that the matter not being resolved. Why would a House of Chiefs meet on a land matter if they know that regardless of what they decide there will be an appeal to the court system?

“ Our Are Are system is very good. We have recorded our genealogies, traced our ancestors and our land boundaries. But I want to know how can that customary tenure system be supported in law. How can development go through the customary system? The customary system is in kastom but it's not recognised in law. The customary system could really help with development because it could show who the right landowners are for a place, this would mean that the benefits from development would be properly shared, not just taken by a few men.”

— MALAITA PREMIER, PETER CHANEL RAMOHIA

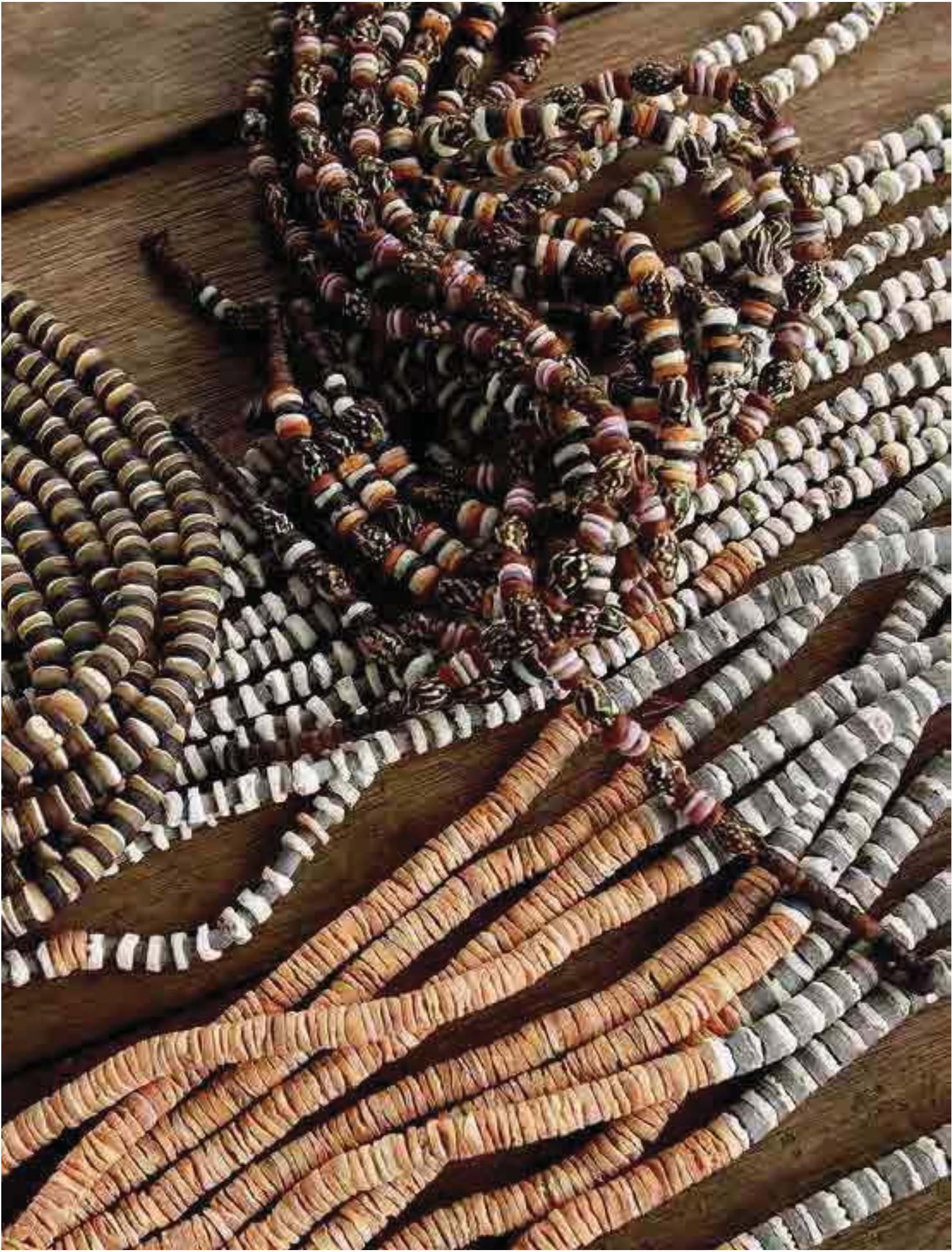
Creating links between customary and state institutions

Across Melanesia the capacity of the state is often limited. Overwhelmingly it is local customary institutions that govern the lives of people in rural areas. Formal state courts remain more expensive and inaccessible to the largely rural population of Melanesia, and in particular to certain groups within the rural population who do not have the resources to access largely urban-based courts. For these reasons a land reform process needs to recognise the role that customary institutions often play in determining local land holding groups and property rights.

In the recent Vanuatu land reforms, the Constitution was amended to attempt to promote legal pluralism. This meant that customary rather than formal state courts can now resolve who the customary landowners are for a given area of land.

In Vanuatu, Article 78(3) of the Constitution now states that: “the final and substantive decisions reached by customary institutions or procedures...after being recorded in writing, are binding in law and are not subject to any appeal or any review by any court of law”.

Changes to the Vanuatu Constitution represent a historic attempt by the Vanuatu parliament to recognise the predominance of customary rather than state institutions in managing the identification of custom landowners.



10 FIRST STEPS ON THE PATHWAY

Questions that need to be answered to build a successful pathway for land reform in Solomon Islands

Area identified	What are the next steps?
CONSULTATION	What types of consultation are needed for the government to be clear about the land issues people face. How can we find out answers to questions like: ▪ Do people want development on their land, and if so, what kind of development? ▪ Are land disputes being resolved effectively and how? Who would people like to resolve land disputes in their area. Do they have a functional established House of Chiefs? Does the House of Chiefs work well at resolving disputes and, if not, why? ▪ How does development happen on land? Do all people benefit equally from development on their land, and if not, why not? Does this require provincial consultations as well as national meetings? How will women and young people be involved in consultations?

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- How does development happen on land? Do all people benefit equally from development on their land, and if not, why not?

Does this require provincial consultations as well as national meetings? How will women and young people be involved in consultations?

Area identified	What are the next steps?
TECHNICAL WORKING GROUP	Is a technical working group needed to guide the land reform process? Who would sit on this working group? What would be the core functions of the group and who would they report to? Is more research needed to support the Working Group identify what is working in Solomon Islands, and what is not.
LEARNING FROM THE REGION	Are there models or case-studies from other Melanesian countries that could usefully apply in Solomon Islands? What is the best way of accessing knowledge from the wider region?
NATIONAL LAND SUMMIT	Is Solomon Islands interested in convening a National Land Summit? How would this be informed by consultations? Who would attend? Who would organise the Summit? How would provincial delegates, women and young people be included in Summit discussions?
COORDINATING CHANGES TO LEGISLATION	How can Solomon Islands ensure there is a coordinated approach to developing legislation? How will it address current problems with existing land legislation? How can changes to land law be coordinated with changes to forestry and mining legislation?
OTHER STEPS?	What other steps do you think are needed to help Solomon Islands build a successful pathway to land reform?



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